EXAMINING THE POLICIES AND PRIORITIES OF THE U.S. DEPARTMENT OF LABOR

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BEFORE THE

COMMITTEE ON EDUCATION AND THE WORKFORCE U.S. HOUSE OF REPRESENTATIVES

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C O N T E N T S

EXAMINING THE POLICIES AND PRIORITIES OF THE U.S. DEPARTMENT OF LABOR

Wednesday, March 16, 2016
U.S. House of Representatives
Committee on Education and the Workforce
Washington, D.C.

The Committee met, pursuant to call, at 10:00 a.m., in Room 2175 Rayburn House Office Building, Hon. John Kline [chairman of the committee] presiding.

Present: Representatives Kline, Wilson of South Carolina, Foxx, Roe, Thompson, Walberg, Salmon, Guthrie, Byrne, Brat, Carter, Bishop, Grothman, Curbelo, Stefanik, Allen, Scott, Davis, Courtney, Polis, Sablan, Wilson of Florida, Bonamici, Takano, Clark, and DeSaulnier.

Staff Present: Andrew Banducci, Workforce Policy Counsel; Janelle Belland, Coalitions and Members Services Coordinator; Ed Gilroy, Director of Workforce Policy; Jessica Goodman, Legislative Assistant; Callie Harman, Legislative Assistant; Christie Herman, Professional Staff Member; Tyler Hernandez, Press Secretary; Nancy Locke, Chief Clerk; Dominique McKay, Deputy Press Secretary; Brian Newell, Communications Director; Krisann Pearce, General Counsel; James Redstone, Professional Staff Member; Molly McLaughlin Salmi, Deputy Director of Workforce Policy; Alissa Strawcutter, Deputy Clerk; Juliane Sullivan, Staff Director; Loren Sweatt, Senior Policy Advisor; Olivia Voslow, Staff Assistant; Joseph Wheeler, Professional Staff Member; Tylease Alli, Minority Clerk/Intern and Fellow Coordinator; Pierce Blue, Minority Labor Detailee; Denise Forte, Minority Staff Director; Christine Godinez, Minority Staff Assistant; Carolyn Hughes, Minority Senior Labor Policy Advisor; Eunice Ikene, Minority Labor Policy Associate; Brian Kennedy, Minority General Counsel; Kevin McDermott, Minority Senior Labor Policy Advisor; Richard Miller, Minority Senior Labor Policy Advisor; Veronique Pluviose, Minority Civil Rights Counsel; Saloni Sharma, Minority Press Assistant; Marni von Wilpert, Minority Labor Detailee; and Elizabeth Watson, Minority Director of Labor Policy.

Chairman KLINE. A quorum being present, the Committee on Education and the Workforce will come to order. Well, good morning, Mr. Secretary, welcome back. It is always a pleasure to discuss with you the policies of the Department of Labor, which impact countless workplaces and millions of workers across the country. As I have said before, it is the responsibility of this committee to

ensure those policies are being administered in a way that best protects the interests of workers and employers and American taxpayers as well.

This is a responsibility we take seriously, especially at a time when many working families and small businesses are still struggling to get by. There is no question that the economy has shown signs of modest improvement, and we certainly welcome every new job that is created. But, there is also no question that many Americans feel they are slipping further behind in an economy that is not meeting its full potential.

At an event in Raleigh, North Carolina, former President Bill Clinton referred to the President's recent State of the Union Address and said: Millions of people look at that pretty picture of America he painted and they cannot find themselves in it to save their lives."

We do not agree on a lot of things but President Clinton has rightly summed up the frustration many Americans feel. Month after month, we exceed low expectations and that simply is not good enough. It is not good enough for the tens of millions of workers still sitting on the side lines, it is not good enough for the nearly 6 million Americans who need full time jobs but can only find part time work and it is not good enough for those families whose incomes remain flat.

We need to do better and there are opportunities to do better. However, those opportunities will be lost if the Department continues to push an extreme regulatory agenda. For example, we both agree that Federal overtime rules need to be changed. The committee has held numerous hearings with witnesses who testify that these rules are so convoluted that well-meaning, law-abiding employers often get tied up in red tape and run afoul of the law.

The overtime rules are also outdated, denying men and women the ability to balance work with their personal and family needs. We have said repeatedly that we want to partner with the Department in a serious effort to streamline and modernize overtime protections. Unfortunately, the Department is pursuing an approach that will do nothing to provide employers with more clarity and certainty. To make matters worse, the Department's proposal will actually stifle workplace flexibility and make it harder for lower income Americans to move up the economic ladder.

These and other consequences will unfold in communities across the country, in local retail stores, small businesses, nonprofit organizations, and community colleges. The very places that can least afford it will be hit the hardest.

In addition to overtime, there is also broad, bipartisan agreement that we need to strengthen policies governing retirement advice. Of course, there are also strong bipartisan concerns with the Department's fiduciary proposal. As Dr. Roe suggested at a hearing last year, if we applied the same regulatory regime on the medical profession, patients would have less access to physicians and the same will be true for those seeking retirement advice. Because of the rule, many low- and middle-income families will have less access to affordable retirement advice and fewer small businesses will offer retirement plans.

Thanks to the hard work of Dr. Roe and others, there is a bipartisan alternative that would protect access to affordable retirement advice and ensure advisors serve their client's best interests. This legislation is a strong foundation to address a shared priority if the Department will abandon its flawed partisan proposal.

Mr. Secretary, I strongly encourage you to take a step back and build bipartisan consensus in these and other important areas. The Department's "my way or the highway approach" will not deliver the lasting positive change that working families and job creators need to move this country forward. The only way to do that is for the administration to work with members of Congress, Democrats and Republicans. I would also encourage the Department to renew its focus where bipartisan consensus has already delivered results such as workforce development and multiemployer pensions.

The President noted recently the importance of providing new skills to those searching for work yet the Department has failed to implement the *Workforce Innovation Opportunity Act* in a timely manner. A new report by the nonpartisan Government Accountability Office confirms the consequences of the Department's inaction and we hope the implementation process will conclude without further delay.

Finally, Mr. Secretary, you played an integral role in our efforts to reform the multiemployer system. Your continued leadership is needed to solidify the gains we have made and to modernize the system for future generations of workers and retirees.

Our success in these areas demonstrates what is possible when extreme policies are set aside and we work together in good faith toward a common goal. In the coming months, I hope we seize the opportunities we have in order to make a real difference in the lives of America's workers and employers.

We now recognize the ranking member, Mr. Scott, for his opening remarks.

[The information follows:]

Prepared Statement of Hon. John Kline, Chairman
Committee on Education and the Workforce

Secretary Perez, it is always a pleasure to discuss with you the policies of the Department of Labor, which impact countless workplaces and millions of workers across the country. As I've said before, it's the responsibility of this committee to ensure those policies are being administered in a way that best protects the interests of workers and employers, and American taxpayers as well.

This is a responsibility we take seriously, especially at a time when many working families and small businesses are still struggling to get by. There is no question the economy has shown signs of modest improvement, and we certainly welcome every new job that's created. But there's also no question many Americans feel they are slipping further behind in an economy that isn't meeting its full potential.

At an event in Raleigh, North Carolina, former President Bill Clinton referred to the president's recent State of the Union address and said, "Millions . . . of people look at that pretty picture of America he painted, and they cannot find themselves in it to save their lives." We don't agree on a lot of things, but President Clinton has rightly summed up the frustration many Americans feel.

Month after month, we exceed low expectations, and that simply isn't good enough. It's not good enough for the tens of millions of workers still sitting on the sidelines; it's not good enough for the nearly six million Americans who need full-time jobs but can only find part-time work; and it's not good enough for those families whose incomes remain flat. We need to do better, and there are opportunities to do better. However, those opportunities will be lost if the department continues to push an extreme regulatory agenda.

For example, we both agree federal overtime rules need to be changed. The committee has held numerous hearings with witnesses who testified that these rules are so convoluted that well-meaning, law-abiding employers often get tied up in red tape and run afoul of the law. The overtime rules are also outdated, denying men and women the ability to balance work with their personal or family needs.

We have said repeatedly we want to partner with the department in a serious effort to streamline and modernize overtime protections. Unfortunately, the department is pursuing an approach that will do nothing to provide employers more clarity and certainty. To make matters worse, the department's proposal will actually stifle workplace flexibility and make it harder for lower-income Americans to move up the economic ladder. These and other consequences will unfold in communities across the country, in local retail stores, small businesses, non-profit organizations, and community colleges. The very places that can least afford it will be hit the hardest.

In addition to overtime, there is also broad, bipartisan agreement we need to strengthen policies governing retirement advice. Of course, there are also strong, bipartisan concerns with the department's fiduciary proposal. As Dr. Roe suggested at a hearing last year, if we applied the same regulatory regime on the medical profession, patients would have less access to trusted physicians, and the same will be true for those seeking retirement advice.

Because of the rule, many low- and middle-income families will have less access to affordable retirement advice and fewer small businesses will offer retirement plans. Thanks to the hard work of Dr. Roe and others, there is a bipartisan alternative that would protect access to affordable retirement advice and ensure advisors serve their clients' best interests. This legislation is a strong foundation to address a shared priority if the department will abandon its flawed, partisan proposal.

Mr. Secretary, I strongly encourage you to take a step back and build bipartisan consensus in these and other important areas. The department's my-way-or-the-highway approach will not deliver the lasting, positive change working families and job creators need to move this country forward. The only way to do that is for the administration to work with members of Congress – Democrats and Republicans. I would also encourage the department to renew its focus where bipartisan consensus has already delivered results, such as workforce development and multiemployer pensions.

The president noted recently the importance of providing new skills to those searching for work, yet the department has failed to implement the Workforce Innovation and Opportunity Act in a timely manner. A new report by the nonpartisan Government Accountability Office confirms the consequences of the department's inaction, and we hope the implementation process will conclude without further delay. Finally, Mr. Secretary, you played an integral role in our efforts to reform the multiemployer pension system. Your continued leadership is needed to solidify the gains we've made and to modernize the system for future generations of workers and retirees.

Our success in these areas demonstrates what's possible when extreme policies are set aside and we work together in good faith toward a common goal. In the coming months, I hope we seize the opportunities we have in order to make a real difference in the lives of America's workers and employers.

Mr. SCOTT. Thank you, Mr. Chairman, and thank you, Secretary Perez, for being with us this morning. We know that the United States has emerged from the depths of the Great Recession with steady economic growth. Here are some facts:

More than 14 million jobs have been created over the last six years extending the longest streak of private sector job growth on record; 242,000 jobs were created in February and the unemployment rate has dropped to 4.9 percent from a high of 10 percent.

Over the last six months, the labor participation has grown as more people are reentering the workforce. Although the growth in the global economy has slowed to the lowest level since 2009, the United States now has the highest growth rate compared to other advanced economies.

This is occurring even while domestic companies are battling the economic headwinds from a strong dollar that makes our exports more expensive in a global market. Despite this economic good

news, we also know that America's middle class has not fully recovered and too many Americans remain underemployed. For example, 15 million people are working part-time, not because they want to, but because they cannot find full-time work. Others are unemployed or discouraged from seeking work, wages have been stagnant.

The middle class, in real terms, for the last four decades, well over 90 percent of new income during the recent recovery has been concentrated in the hands of the top one percent. It was well established that the link between productivity gains and wages in our economy has been broken for the past generation. This chart shows that from the 1950s through the 1970s, as productivity increased, so did wages but around the 1970s, '73, there was a break where wages were essentially stagnant as productivity continued to grow.

This chart shows that the rich are getting richer because the productivity is producing more wealth but the workers are not getting the benefit of that productivity. Standard and Poor's has studied whether the U.S. economy would be stronger with a narrower income gap and concluded that inequality is one major factor in holding back the economy. S&P reduced its projections for annual growth from 2.8 percent down to 2.5 percent due to widening inequality.

Again, economists on Wall Street are telling us that extreme inequality is holding back the economy. Now this next chart illustrates extraordinary rapid growth of annual wages for the top one percent that is the line on the top. It grew 149 percent while the wages in the bottom 90 percent, just grew about 16 percent from 1979 to 2014. Today's discussion contrasts two very different views of the role of policy, one where policies concentrate their economic gains disproportionately among those at the top income bracket with the premise that these gains eventually trickle down, and another one which calls for public investment and training, infrastructure and research in order to produce sustainable growth for everybody. The question before us is whether we will choose to pursue prosperity economics or austerity economics where we adopt policies that advance the middle-class jobs or perpetuate poverty wage jobs with our labor policies and workforce investments concentrate the wealth in the hands of the top one percent or will our policies grow and strengthen working families?

The choices we make here in Congress, especially those we make in this committee, will shape that answer. The President's budget recognizes this reality and proposes a way to make investments our country needs by responsibly ending sequestration.

Democrats and many Republicans agree that the mildest mindless cuts mandated by sequestration are bad policy and do not benefit our economy or our national defense, but instead of addressing the situation head on, the debate is focused on extending tax cuts for the wealthiest Americans while robbing the country of resources needed, education, infrastructure, and research.

We saw this late last year when we passed another 600-and-some billion-dollar tax cut which drained resources from investments and that passed the House. I do not think it has passed the Senate and hopefully it will not.

The Department of Labor's priorities and budget requests offer proposals to narrow the extreme and growing income inequality in our country while closing the pay gap between men and women. The fact is that concrete steps must be taken to move the Nation in the right direction.

One step is to adopt policies that pay workers a living wage and enable them to balance family and work. A raise in the minimum wage is long overdue. If the minimum wage had been adjusted for inflation over the years, it would have increased to over $18 an hour by now but of course it has not kept up with the productivity.

Another step to take is to protect retirees and their hard-earned retirement savings to ensure that our fellow Americans can rest with dignity after a lifetime of hard work. Likewise, protections are needed to keep workers safe and healthy on the job. We must also adjust the overtime threshold, the guaranteed access to paid sick leave and to ensure that Federal workers and contractors are paid fairly by requiring contractors to provide pay stubs so that you know exactly what you have been paid and that would significantly reduce wage theft.

All of these are long overdue, and I applaud the administration for proposing rules in these areas. Economic growth and strong regulatory protections are not mutually exclusive. After all, the absence of regulation allowed Wall Street to run amok and cause a credit freeze in 2008 that destroyed hundreds of thousands of jobs every month.

Finally, I know that Secretary Reid focused on preparing the Nation's workforce on jobs of today, more importantly for the jobs of tomorrow, these priorities are reflected in the Department's budget which focuses funding on summer and year-round jobs, opportunities for disconnected youth, apprenticeships and programs that expand training for in-demand jobs.

Mr. Secretary, I look forward to hearing more about your department's agenda and your vision for a more prosperous economy and a more prosperous middle class. Thank you Mr. Chairman.

[The information follows:]

Opening Statement for Robert C. "Bobby" Scott Ranking Member
Committee on Education and the Workforce "*Examining the Policies and Priorities of the U.S. Department of Labor*"
Full Committee Hearing – Rayburn 2175
March 16, 2016, 10 a.m.

Thank you, Mr. Chairman, and thank you, Secretary Perez, for being with us this morning.

We know that the United States has emerged from the depths of the Great Recession with steady economic growth. Here are some of the facts:

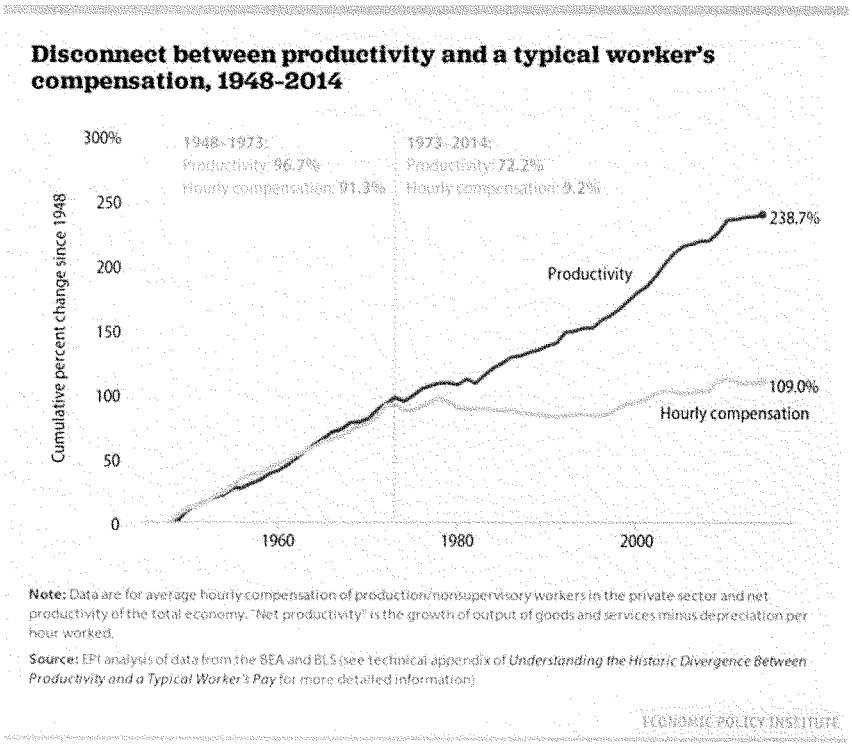
- More than 14 million jobs have been created over the past six years, extending the longest streak of private-sector job growth on record.
- 242,000 jobs were created in February, and the employment rate has dropped to 4.9 percent from a high of 10 percent.
- Over the past six months, labor force participation has grown as more people are re-entering the workforce and finding jobs.

- Although growth in the global economy is slowing to the lowest level since 2009, the U.S. now has the highest growth rate compared to other advanced economies. This is occurring even while domestic companies are battling economic headwinds from a strong dollar that makes our exports more expensive in global markets.

Despite this economic good news, we also know that America's middle class has not fully recovered, and too many Americans remain under-employed. For example, over 15 million people are working part time, not because they want to, but because they cannot find full time work. Others are unemployed or discouraged from seeking work. Wages have been stagnant for the middle class in real terms for the past four decades, while over 90 percent of new income created during this recovery has been concentrated in the hands of the 1 percent.

It is well established that the link between productivity gains and wages in our economy has been broken for most Americans for the past generation.

[Chart 1]

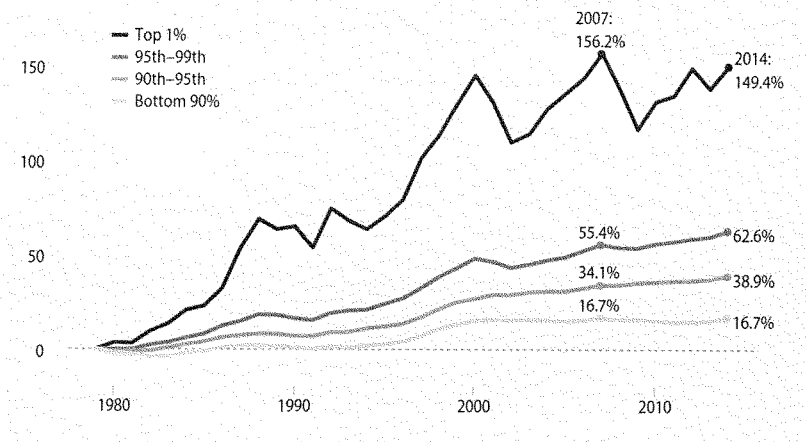


As the chart shows, between 1948 and 1973, productivity and hourly compensation grew at nearly equal rates – productivity increased by almost 97 percent and hourly compensation for typical worker increased by 91 percent. However, in the 41 years that followed, productivity skyrocketed while wages barely rose. From 1973 to 2014, hourly compensation of a typical worker rose just 9 percent in real terms while productivity increased 72 percent. In other words, workers aren't receiving a fair share of the wealth they create. The rich are getting richer while middle class families are being squeezed to the limit. And middle- and low-wage earners are being squeezed the most.

Standard and Poors has studied whether the U.S. economy would be stronger with a narrower income gap and concluded that inequality is one factor holding back economic growth. S&P reduced its projections for annual growth from 2.8 percent down to 2.5 percent due to widening inequality. Again, let me repeat that point—economists on Wall Street are telling us that extreme inequality is holding back economic growth.

[Chart 2]

Cumulative percent change in real annual wages, by wage group, 1979-2014



Source: EPI analysis of Kopczuk, Saez, and Song (2010, Table A3) and Social Security Administration wage statistics

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This next chart illustrates the extraordinarily rapid growth of annual wages for the top 1 percent compared with everybody else: top 1 percent wages grew 149 percent, while wages of the bottom 90 percent grew just 16.7 percent between 1979 and 2014. Today's discussion contrasts two very different views of the role of policy – one where policies concentrate the economic gains disproportionately among those in the

top income bracket, on the premise that these gains eventually trickle down, and another which calls for public investments in training, infrastructure, and research in order to produce sustainable growth.

The question before us is whether we will choose to pursue prosperity economics or austerity economics? Will we adopt policies that advance middle class jobs or perpetuate poverty wage jobs? Will our labor policies and workforce investments concentrate wealth in the hands of the top 1% or will our policies grow and strengthen working families?

The choices we make here in Congress, and here in this Committee, will shape that answer. The President's budget recognizes this reality and proposes a way to make the investments our country needs by responsibly ending sequestration. Democrats and many Republicans agree that the mindless cuts mandated by sequestration are bad policy and do not benefit our economy or our national defense. But instead of addressing the situation head on, the debate has focused on extending tax cuts for the wealthiest Americans while robbing the country of

resources needed for education, infrastructure and research. We saw this again last year where another $600 billion in tax cuts drained resources from investments.

The DOL's priorities and budget request offer proposals to narrow the extreme and growing economic inequality in our country, while closing the pay gap between men and women.

The fact is that concrete steps must be taken to move the nation in the right direction. One step is to adopt policies that pay workers a living wage – and enable them to balance work and family. A raise in the minimum wage is overdue and it's the right thing to do. The minimum wage, adjusted for inflation, would have increased to over $18 per hour by now had it kept pace with growing productivity.

Another step to take is to protect retirees and their hard earned retirement savings to ensure that our fellow Americans can rest with

dignity after a lifetime of hard work. Likewise, protections are needed to keep workers safe and healthy on the job.

We must also adjust the overtime threshold, guarantee access to paid sick days for federal contractors, and ensure that workers on federal contracts are paid fairly by requiring contractors to provide pay stubs.

All of these are long overdue and I applaud the Administration for proposing rules in these areas. Economic growth and strong regulatory protections are not mutually exclusive. After all, the absence of regulation allowed Wall Street to run amok, and cause a credit freeze in 2008 that destroyed 800,000 jobs per month.

Finally, I know that Secretary Perez remains focused on preparing the nation's workforce for the jobs of today, and more importantly, for the jobs of tomorrow. These priorities are reflected through the Department's budget which focuses on funding for summer and year

round jobs, opportunities for disconnected youth, apprenticeships, and programs that expand training for in-demand jobs.

Mr. Secretary, I look forward to hearing more about your Department's agenda and your vision for a more prosperous economy and a more prosperous middle class.

Chairman KLINE. I thank the gentleman. Pursuant to Committee Rule 7(c), all members will be permitted to submit written statements to be included in the permanent hearing record and without objection, the hearing record will remain open for 14 days to allow such statements and other extraneous material referenced during the hearing to be submitted for the official hearing record.

It is now my pleasure to introduce our distinguished witness. Secretary, we are delighted to have you back. The Honorable Thomas E. Perez serves as the U.S. Secretary of Labor and is no stranger to this committee and to hearings here and we are very glad to have you back.

He has a distinguished career and I can go through a list of other positions, Assistant Attorney General for civil rights of the U.S. Department of Justice, Secretary of Maryland's Department of Labor, and so on. He has got a lot of experience, he is our Secretary and we are delighted to have him here today. Now, Mr. Secretary, I have to ask you to stand and raise your right hand.

[Witness sworn.]

Chairman KLINE. Let the record reflect that the Secretary answered in the affirmative again. Before I recognize you to provide your testimony, let me remind you of our lighting system. I cannot remember the last time we were in this room the last time you were here.

Secretary PEREZ. No, it is pretty different.

Chairman KLINE. New digs here. The system is still the same. We have the old red, yellow, green light system. It should be right there in front of you. Take the time that you need for your testimony. I will not gavel you down while you are giving your testimony but please be mindful that we are going to have a lot of member who want to engage in the discussion, and then again I will remind my colleagues that members will have five minutes unless I have to shorten the time as the time goes on.

Mr. SCOTT. Chairman, could I correct my testimony? I was just advised that the 600-and-some billion-dollar tax cut was approved by the Senate and went into law, so there.

Chairman KLINE. It stands corrected. So again to my colleagues, please do not push the limits on time. As we saw yesterday, we can run out of time very quickly and I would rather not get down to 3 minutes per member so be mindful of the time as you go forward and try not to put the Secretary in the position of having 10 seconds to give a 5-minute answer. That may be the only time, Secretary, that you may hear me drop the gavel is if you are in the process of understandably giving a 5-minute answer where you are given 10 seconds. With that understanding, we are ready to go, Mr. Secretary recognized.

TESTIMONY OF HONORABLE THOMAS E. PEREZ, SECRETARY, U.S. DEPARTMENT OF LABOR, WASHINGTON, D.C.

Secretary PEREZ. Thank you, Mr. Chairman, good morning and thank you for this opportunity to be here and I want to start out by saying thank you for your distinguished service. I was very saddened when I learned of your decision to retire and it has been an honor and pleasure working with you. Thank you for your service to the Nation and thank you for your service to your constituents.

It has really been a pleasure working with you. It has been a pleasure working with everyone on this committee. We have done a lot of different things, whether it is Mr. Guthrie and ESOPS, Congresswoman Foxx and apprenticeship, Ranking Member Scott and minimum wage, and so many others, Congressman Courtney and so many issues, so I want to say thank you.

We do not always agree on everything as this hearing I suspect may illustrate but we do agree on a lot and we will always search for that common ground. And as we prepare for the final 10 months of this administration, I do think that it is important to reflect on where we have been, where we are, and where we need to go.

President Obama inherited an economy in freefall and the three months before he took office, the economy hemorrhaged roughly 2.3 million jobs. Seven years later, we have successfully climbed out of the worst economic crisis in generations although there is undeniable unfinished business.

We are now in the middle of the longest streak of private sector job growth on record: six straight years to the tune of 14.3 million new jobs. Unemployment is down from 10 percent to now 4.9 percent. Auto sales reached a record high last year. And again, as I mentioned, while we still have the unfinished business of ensuring shared prosperity for everyone, we have made undeniable progress and I am proud of the role that the Department has played in this progress because our work is critical to fortifying the basic pillars of the middle class and education and training that allows you to move up the ladder of success: healthcare that is affordable and accessible, a fair day's pay for a hard day's work, a roof over your head, and a mortgage that will not go underwater, and the opportunity to save for a secure and dignified retirement.

These pillars took a beating during the Great Recession, but I have never felt more confident in the resilience of our economy, our workers, and our businesses. The Labor Department's work continues to help sustain this recovery while addressing the unfinished business of ensuring shared prosperity. For instance, between 2008 and 2014, our employment and training program served an average of 14 million Americans a year, helping more than half of them get new jobs, and the new *Workforce Innovation and Opportunity Act* will make us that much more effective. I am very grateful to the members of the committee, to the bipartisan support, the overwhelming bipartisan support in passing this new law, and we continue to work with our State and Federal and local partners toward full implementation. WIOA is the blueprint for a modernized and streamlined workforce system that will better serve the job seekers and employers alike.

I often refer to this as our Eisenhower moment. Just as we built the interstate highway system in the mid-20th century, today we are building the 21st century skill superhighway. It has dedicated lanes for different populations, helping everyone reach their ultimate destination, a middle class job and prosperity for workers, businesses, and communities alike. One of the on ramps on that superhighway is apprenticeship. Every public dollar invested in this earn while you learn model provides a $27 return. That was one of our recent studies and that is why the President has challenged

us to double the number of apprentices in the coming years while transforming the system by diversifying and expanding to new industries. Last year, we made the largest ever Federal investment in apprenticeship, $175 million in grants, and I appreciate the $90 million that Congress appropriated for this fiscal year.

We are making sure apprenticeship is accessible in every community, every ZIP Code, and our mission does not just help people find good jobs but makes sure that these jobs pay a family sustaining wage. That is why we continue to advocate for an increase in the minimum wage, strongly support the Scott-Murray proposal, and we will continue to work with State and local governments on this issue. We also continue to work on overtime because overtime stands for the simple proposition that if you work extra, you should be paid extra. It is a basic principle and the final rule that we have worked on and had a very inclusive process about was submitted to OMB earlier this week for review.

Our Wage and Hour Division has also cracked down on wage theft that threatens the livelihoods of so many people. Since 2009, the Wage and Hour has been able to secure back wages totaling $1.6 billion for 1.7 million workers. I believe it is a false choice to suggest that we can either have economic growth or workplace safety. We can and must have both and this administration has been vigilant about making sure that workers do not have to risk injury or illness in order to earn their paycheck while working closely with employers on this matter. In the 1930s, Francis Perkins identified silica dust as a dangerous and deadly hazard and called on employers to protect those workers.

Finally, 80 years later, our OSHA office is close to issuing an updated rule that will significantly reduce workers' exposure and save lives. Our mine safety office has done remarkable work over the last 7 years. Thanks in part to their efforts, there were fewer mining fatalities in 2015 than any other year in history.

We continue to implement the historic coal dust rule and since it took effect, about 99 percent of the dust samples taken by MSHA and coal operators are in compliance.

We are also charged with empowering workers not just during their career but after their careers are over and we have done a lot of work through our Employee Benefit Security Administration toward this end.

One such issue is the proposed Conflict of Interest Rule which I suspect we might discuss here today, just a guess, and it is based on a commonsense principle: if you want to give advice, you have to put your client's best interest first. As Jack Bogle, the founder of Vanguard, said: "I learned early on in the business that when you put your customers first, it is great for your customers and it is great for business." And so we will continue to work on that rule.

I have had an opportunity in this job to make a lot of house calls and those house calls have inspired me to continue to do my work. I met with a woman in Connecticut named Katherine Hackett. She had been out of the workforce for such a long time, but for the grace of God could have gone any of us, but as a result of the leadership of her member of Congress, the work of Match.com, otherwise known as the Department of Labor, our State and local partners, she now has a full-time job again, and she is thriving.

I have seen so many inspiring stories like Katherine Hackett's, but I have also visited people whose boat has not yet been lifted by this rising tide, people like the janitor in Houston, Astro Verta, who is struggling to get on with less than $9 an hour. The fast food worker in Detroit who was sleeping in her car with three kids the night before I met her because she had been evicted from her apartment. Allen White, the person I met again last week in my hometown of Buffalo, whose life is being very much inhibited by silicosis. These challenges that they confront keep me up at night. And the opportunity to help them and to create shared prosperity and an economy that works for everyone for everyone,to work with you whenever possible, this is what gets me out of bed with a hop in my step every morning, aside from the fact that I had a knee replacement so I have a bit of a hop from time to time.

We have 310 days left until the weekend and I want to make sure that we do not simply count the days but we make every day count. And I look forward to working with you toward that end, Mr. Chairman, and thank you for your time and thank you for your courtesy and thank you for your long and distinguished career of service.

[The statement of Secretary Perez follows:]

STATEMENT OF
THOMAS E. PEREZ, SECRETARY
U.S. DEPARTMENT OF LABOR
BEFORE THE
COMMITTEE ON EDUCATION AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES

March 16, 2016

Good morning. Chairman Kline, Ranking Member Scott, Members of the Committee: thank you for the invitation and opportunity to be here with you today. This is my last year as Secretary of Labor and the last year of an Administration that is proud of the incredible strides we have made in putting people back to work and getting our economy back on track. I have very much enjoyed working with and getting to know Members of this Committee. While we may not always agree on everything, I appreciate the constructive dialogue we've established, and I'm confident we can continue to find common ground on many important issues. It's my hope that, in these final 10 months, we can work together to sustain and strengthen this recovery, building on the progress of the last seven years.

The nation and the economy have come a long way. When President Obama took office, the nation was hemorrhaging jobs – more than two million just in the three months before his inauguration. The auto industry was flat on its back. Some of our major financial institutions were collapsing. Millions of Americans were losing their homes and their retirement savings. It was the worst economic crisis in generations.

Seven years later, the turnaround is remarkable. The wind is at our back again. The unemployment rate, which had reached 10 percent, has been cut by more than half to 4.9 percent, and for the first time since the fall of 2007, has been below 5 percent for two months in a row. The longest streak of private-sector job growth on record now stands at a full six years, 72 consecutive months, during which businesses created 14.3 million jobs. The economy added an average of 240,000 jobs a month in 2014 and 2015, the first time we've had back-to-back years that strong since 1998-1999. The auto industry had its strongest year of sales ever in 2015. Initial unemployment claims at the beginning of 2009 were staggeringly high – more than 600,000 a week; today they've been at or below 300,000 for more than a year. The labor market has rebounded. There are now 5.6 million job openings. In July 2009, there were nearly seven job-seekers for every available position; today that ratio is about 1.4-to-1, near its pre-recession low.

Nevertheless, important challenges remain. The rising tide simply isn't lifting every boat. The economy is unquestionably growing, but it remains out of balance, with middle-class families not getting their fair share of the growth and value they've helped create. Too many people, no matter how hard they work, can't get by, let alone get ahead. We are not yet creating the shared prosperity we need.

Many of our challenges, in fact, pre-date the Great Recession. Many are rooted in the fact that, as President Obama articulated in his State of the Union address, our economy is undergoing extraordinary change. These changes – like globalization and automation – offer promising

opportunities for progress, but they also present real challenges to the economic stability and security of so many working people. Traditional work arrangements have changed in a way that's contributing to a fissuring of the American workplace. Women have entered the workforce in droves, but our laws and policies haven't kept pace with this development. The number of workers represented by unions has continued to decrease, diminishing workers' voice in the workplace and undermining the strength of the middle class. The retirement landscape has shifted dramatically, adding complexity and uncertainty to what used to be a straightforward system. Increasing wages remains the primary piece of unfinished business of the recovery – and of the last several decades – and the biggest open question as we confront a changing economy. Wage growth has continued over the course of 2015 and into 2016, and due partly to low inflation over the last year, workers are now seeing some real wage growth. However, for most workers, real wages have been largely flat since the late 1970s, even as productivity has increased.

The President posed a fundamental question to the nation in his State of the Union address: in light of these challenges, how do we give everyone a fair shot at opportunity in this new economy? I am at heart an optimist – but I am also a realist and a pragmatist. I put all of those "ists" together in answering the President's call. I am proud that during the past seven years at the Department of Labor we have begun to chart a course that is creating a new social compact for the new economy that will provide that fair shot for all Americans – even as so much changes around us. The new social compact is based on a commitment to building an economy that works for everyone, an economy based on shared prosperity.

Promoting Skills and Workforce Training

An essential element of having a fair shot at opportunity in the new economy is having the ability to adapt to a rapid rate of change. In the economy of the future, successful career paths are not going to be linear – they are going to zig and zag as technology continues to evolve. Therefore, to help put forward the building blocks of a social compact for the 21st century, one of the most important things the Labor Department can do is help people get the skills and training they need to compete and succeed.

During the past seven years, we've helped a lot of people navigate these changes: From Program Years (PY) 2008 to 2014, our programs helped place nearly 50 million individuals in new jobs. During the same time period, over 140 million participants received job-related services, including 1.5 million participants who completed training programs. Over 10 million veterans were served. Between July 2014 and June 2015, our Employment and Training Administration (ETA) served over 14.5 million participants, with over 6.5 million previously unemployed people finding jobs.[1] During this one-year period, approximately 150,000 individuals completed training programs. Of the 14.5 million participants, 1 million were veterans.

I've been enormously gratified by the bipartisan consensus in support of this work, both here in this Committee and in Congress more generally.

[1] This is the most recent program year that the Department has complete data to report. All of these figures include some participants multiple times, which reflects customers who received services in multiple reporting periods.

Never was that consensus more apparent than with the passage in July 2014 of the Workforce Innovation and Opportunity Act (WIOA), which modernizes and streamlines the public workforce system to prepare workers for 21st century jobs and ensure American businesses have the skilled workers they need to be competitive in our global economy. WIOA is the blueprint for the construction of what I call a skills superhighway, nearly as important an infrastructure project as President Eisenhower's interstate highway system some 60 years ago. The skills superhighway has dedicated lanes, where workers, whether veterans, people with disabilities, disconnected youth, or formerly incarcerated individuals, can pick up stackable, portable credentials. The destination is the middle class, but there are a lot of different routes on the superhighway to get there.

Our task now is full implementation of WIOA. The Department has worked in strong partnership with the Departments of Education, Health and Human Services (HHS), Agriculture, and Housing and Urban Development to realize the law's vision of streamlined investments in employment and training to better serve both people looking for work and employers seeking skilled talent. The Department, together with the Department of Education, has published joint proposed rules, issued joint key guidance, and provided joint technical assistance to the workforce system – all toward making the new law a reality.

States and territories are working hard to bring the principles of WIOA to life, convening their partners to align strategy, service delivery, and performance reporting across programs. Most states and outlying areas already have WIOA-compliant state and local governing boards in place. While all states and outlying areas must submit a Unified or Combined State plan prior to the start of Program Year 2016, over 27 states and two outlying areas are planning to submit Combined State Plans, which include the six core partner programs, as well as one or more other partners in the American Job Center network. Nearly all states have already posted their draft state plans online for public comment.

The FY 2016 Omnibus reflects important bipartisan support for WIOA, and for investments that will modernize federal, state and local workforce strategies to make training more responsive to business needs. The Omnibus returned the Governor's Reserve authorization to 15 percent, thus supporting states as they work to meet WIOA obligations, while maintaining funding for local services to employers and job seekers. To further support this progress, we are grateful for funding flexibilities of over $20 million under the Omnibus that will allow the Department and the states to continue toward full execution of WIOA. The 2017 Budget builds on this foundation, taking the WIOA formula grants to their full authorized level and proposing essential investments to help States create the data systems and capacity needed to meet WIOA's performance measurement and evaluation requirements.

The FY 2016 Omnibus also includes an investment of $90 million to expand Registered Apprenticeship, a tried-and-true workforce strategy combining work and training, which delivers immeasurable benefits for workers and employers alike. The return on investment for apprenticeship is dramatic. Studies show that for every taxpayer dollar invested in apprenticeship, we see a tax revenue return of about $27 over the career of an apprentice. Meanwhile, the average starting salary for an apprenticeship graduate is over $50,000 a year.

Apprenticeship graduates also earn over their careers $300,000 more on average in wages and benefits than their peers who don't participate in an apprenticeship.[2]

The President recognizes that, over several decades, we have undervalued apprenticeship. In response, he issued a bold challenge in 2014 to double Registered Apprenticeships within five years. Since that call to action, they have grown by nearly 20 percent, to over 450,000 nationwide today. Taking the system from all-time lows in participation to these modern-day heights marks one of the greatest turnarounds the apprenticeship system has ever experienced. The Budget's proposed continuation of the apprenticeship grants seeks to continue that progress.

To maintain that growth and to clear the high bar set by the President, we should not just double but also diversify, by expanding apprenticeship to sectors of the economy that haven't traditionally utilized them and to demographic groups -- including women, people of color, and individuals with disabilities -- that have been historically underrepresented. ETA has teamed up with the Department's Women's Bureau on the development of the "Pre-apprenticeship: Pathways for Women into High-Wage Careers" guide. Thanks in large measure to leadership from labor unions and their employer partners, apprenticeship has been critical to building a workforce and creating opportunity in skilled trades like plumbing, carpentry and electrical work. Now we want to build on that foundation and apply the same model to industries like health care, IT, cybersecurity, and advanced manufacturing. Companies like UPS, CVS Health, and Zurich Insurance are finding success with apprenticeship.

As I've traveled the country, I've seen the powerful difference apprenticeship is making in people's lives. I saw it in Boston where the current Mayor, Marty Walsh, created a pre-apprenticeship program called Building Pathways back when he was the head of the local Building Trades. It takes people from some of the city's poorest neighborhoods and communities, including public housing residents, and prepares them for a union apprenticeship that is a springboard to a middle-class job.

At the Urban Technology Project in Philadelphia, students receive hands-on-training and industry-recognized credentials through a computer support specialist apprenticeship program. I met one student, Jessica, who is now the director of operations at a software development firm. She said she feels just as qualified as her colleagues who earned four-year degrees, and she likened it to a board game, where she got to "skip ahead four spaces to payday."

There is also the story of Shane, a young man in North Carolina. Shane completed an apprenticeship program at Ameritech Die and Mold, utilizing the latest technology for plastic's mold injecting. While many individuals in their early 20s struggle to find good jobs, Shane has earned his associates degree, is debt-free, and earning approximately $40,000 per year.

We want to create more of these success stories. That's why we made an historic investment last year: $175 million in grants to 46 public-private partnerships – an investment that is expected to result in 34,000 new apprenticeships and lay a foundation for future growth.

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[2] http://www.mathematica-mpr.com/~/media/publications/PDFs/labor/registered_apprenticeship_10states.pdf

Apprenticeship and higher education doesn't need to be an either-or; they can be a "both-and." Our Registered Apprenticeship College Consortium, which has expanded to over 239 colleges and 976 training programs, makes it easier for apprentices to earn college credit. And we're making it easier for employers and others to leverage federal resources and education programs -- including the GI Bill, Pell grants, and others -- to support participation in apprenticeship.

Last fall, the Department published an Apprenticeship Equal Employment Opportunity proposed rule that would modernize and streamline 1978 rules to help provide equal opportunity for all Americans to participate in apprenticeship programs regardless of race, sex, color, national origin, disability, age, genetic information, gender identity, or sexual orientation. Expanding opportunity for all Americans is a critical element of the social compact 2.0.

To ensure the strongest possible workforce for the economy of the future, we need to tap the talents of all our people. That includes those who got on the wrong side of the law and have paid their debt to society. America is a nation that believes in second chances, where we don't have a person to spare. Transitioning adult and juvenile offenders face extraordinary challenges in reintegrating into society as well as obtaining and retaining employment. That's why I am proud of the work we have done through the Reentry Employment Opportunities (formerly RExO), to provide education and career services to people involved in the criminal justice system.

I am especially proud of the Department's new Linking to Employment Activities Pre-Release (LEAP) program, which provides funding to bring American Job Centers "behind the fence" -- that is, behind the walls of prisons. It's just smart workforce development to provide employment services to incarcerated men and women while they're still serving their terms, so they can hit the ground running after they are released. We invested $10 million in LEAP grants in 2015, and recently announced the availability of $5 million more this year. In suburban Philadelphia recently, I visited the Montgomery County Correctional Facility, which is implementing this model with the help of one of our 2015 LEAP grants. During my visit there, I spoke with one inmate for whom this isn't just a question of opportunity, but of dignity. "It's an honor to be recognized instead of always being called names," he said. "It's an honor to be looked at as someone other than a criminal."

Our reentry work is a win-win-win. It helps people put their lives back together and reintegrate in their communities. It gives employers greater access to skilled workers. And it is a smart public safety strategy too – because the best anti-recidivism strategy is a good job at a good wage.

Our reentry programs aren't the only ones that address the needs of vulnerable populations. We serve at-risk youth through the Job Corps program, which has provided job skills training for 2.7 million young people in the 51 years since its inception. Today the program serves over 60,000 students each year, preparing them for 21st century careers. As with all our employment and training programs, we can't do it without the help of thousands of employer partners, from Fortune 500 corporations to small businesses in local communities. In PY 2014, 79 percent of Job Corps students who completed the program successfully started careers, including careers in the Armed Forces, or enrolled in higher education or advanced skills training in the first quarter after they completed the program. Also in PY 2014, 95 percent of Job Corps students who began

a Career Technical Training program attained industry-recognized credentials in industries like healthcare, IT and construction.

Strengthening student safety and security is a top priority for the Job Corps program. We have initiated a National Safety Campaign – *Standup for Safety* – which includes increased staff training, more intensive center oversight and a requirement that all centers review and strengthen their security procedures. Job Corps has also worked with our students and contractor community to support a student-led *Youth 2 Youth: Partners for Peace* initiative, designed to address youth-on-youth violence, aggression and bullying.

The Department has also maintained a focus on promoting innovation and continuous improvement within the Job Corps program. We released an application to pilot an innovative approach to the Job Corps model at the Cascades center, and we are planning to initiate additional pilots in the future. The Department will also launch a major external review of the program beginning in 2016, with the goal of generating reform ideas that will position the program for continued success. I look forward to working with this Committee and Congress as we continue our efforts to improve and strengthen the Job Corps program.

Supporting Our Veterans

As we focus on meeting the skills needs of our nation's workers, among our most important clients are those who have served our nation in the military. The Veterans' Employment and Training Service (VETS) is the federal government's lead agency on veteran employment, ensuring that the full resources of the Department are brought to bear on behalf of veterans, Service Members and their families. Honoring the solemn obligation we have to our nations' veterans must be part of any social compact – past, present and future. In the military, our Service Members are a part of the most advanced, most technologically innovative force in history. VETS' work has led to measurable and substantial progress. The agency has improved preparation of transitioning Service Members entering the civilian workforce, refocused the Jobs for Veterans State Grants (JVSG) program to prioritize veterans facing significant barriers to employment, promoted a fair and high-quality federal work environment under the Uniformed Services Employment and Reemployment Rights Act (USERRA), and built partnerships with private sector employers. And to advance, improve, and expand the employment opportunities for disabled veterans, VETS and the Department of Veterans Affairs Vocational Rehabilitation and Employment Service are updating their memorandum of agreement to work together to maximize services provided to disabled veterans and their dependents.

The employment situation for veterans continues to improve. The annual veteran unemployment rate dropped to 4.6 percent in 2015, remaining lower than the 5.2 percent unemployment rate for non-veterans. Further, 2015 saw significant improvement in the employment picture for particular groups of veterans, including both male post-9/11 veterans -- whose unemployment rate dropped from 6.9 percent to 5.7 percent -- and female post-9/11 veterans, whose unemployment rate dropped from 8.5 percent to 6.4 percent. However, because rates for certain veteran populations remain elevated as compared to the overall veteran unemployment rate, we must continue to focus our resources and efforts in this area.

At our nearly 2,500 American Job Centers (AJC) across the country, VETS continues to focus on increasing the rate of intensive services to veterans with significant barriers to employment. We're seeing meaningful results, with state workforce agency Disabled Veteran Outreach Program specialists now providing over 75 percent of JVSG participants with intensive services, a more than 200 percent increase from PY 2009 levels. Summit Consulting, LLC did a statistical analysis[3], concluding that veterans benefit substantially – receiving expedited services, becoming employed, staying employed, and having higher earnings – from being first-in-line for assistance at AJCs.

We look forward to working with Congress to continue all of this important work. The President's Fiscal Year (FY) 2017 Budget supports our mission with a number of investments on behalf of veterans -- including JVSG, the Transition Assistance Program, programs for homeless and incarcerated veterans (Homeless Veterans' Reintegration Program and Incarcerated Veterans Transition Program), the National Veterans' Training Institute, enforcement of USERRA, and veterans' preference in federal hiring.

Advancing Economic Fairness for All Workers

As the President has made clear, addressing fairness in our changing economy is an essential element of the new social compact. We've made great strides over the past seven years in ensuring that workers get a fair day's pay for a fair day's work. For example, the Wage and Hour Division, which enforces laws establishing our nation's most fundamental labor standards -- including requirements for a minimum wage, payment of overtime, prohibitions on child labor, and the right to take leave under the Family and Medical Leave Act -- has recovered nearly $1.6 billion in unpaid wages for more than 1.7 million workers during the Obama Administration.

Ensuring fairness in our evolving economy requires understanding this evolution and adapting how we do our work. That's why late last year, the Department hosted the Future of Work Symposium, a chance to discuss the ways work is changing and how those changes are impacting workers and labor standards.

While innovations in technology and business models may create efficiencies, we need to make sure that workers don't have to trade security and basic rights in the process of keeping up with these changes. What we need is inclusive innovation that continues to create jobs and strengthen our economy without undermining or undercutting workers. While the on-demand economy is a relatively new phenomenon, we have in fact been grappling with several of the issues it's raised for some time. For decades, industries like hospitality and janitorial services have become increasingly "fissured," with the traditional relationship between employer and employee breaking apart and leaving workers more vulnerable. With this symposium, the Department took a leadership role in encouraging and guiding the national conversation about what these changes mean for American workers and how the Department of Labor should adjust its work accordingly.

[3] http://www.dol.gov/asp/evaluation/completed-studies/VeteranNon-VeteranJobSeekers.pdf

One way we've adapted our work throughout this Administrations is to be even smarter and more strategic in our enforcement approach. That's why all of our agencies tasked with protecting fairness in the workplace have targeted labor law violations in industries where we know they are most prevalent, and where they affect the most vulnerable workers who are unlikely to exercise their rights under the law. Our primary goal, however, is not to find violations after the fact, but to avoid violations and improve compliance in the first place. We are working towards this goal through a combination of strategic enforcement, outreach and education, and collaboration with stakeholders.

Our Wage and Hour Division (WHD) is a leader in adapting to fit the realities of the modern workplace and anticipating what will come next for American workers and employers. Since 2009, WHD has conducted more than 15,000 outreach events and presentations, providing valuable information and compliance assistance to thousands of employers, workers, and stakeholders nationwide. Nearly half of investigators speak a language other than English, including Arabic, Cantonese, Chinese, Creole, Farsi, Hindi, Japanese, Korean, Russian, Spanish, Tagalog, Thai, Taiwanese, Turkish, and Vietnamese. To strengthen our outreach efforts, in 2010 WHD created a new position, Community Outreach and Resource Planning Specialists (CORPS). These CORPS work in WHD offices nationwide, improving our ability to get information to those who need it; and providing training and resources to employers, their associations, worker advocates, and other stakeholders.

The changes in our economy have increased the salience of misclassification of employees as independent contractors, a serious issue that WHD continues to investigate closely. Misclassification has three victims: workers, law-abiding businesses, and taxpayers. WHD will continue refining and strengthening its strategies in priority industries, with an emphasis on detecting the various forms of misclassification. Our misclassification initiative includes vigorous enforcement and litigation; outreach to business and workers, including the release of an Administrator's Interpretation on misclassification in July 2015 to provide clear guidance to the regulated community regarding their obligations under the law; and partnerships with other federal agencies and state governments. We've signed Memoranda of Understanding with 28 states that will allow us to share information and coordinate enforcement. Since 2015 we have renewed three existing MOUs and signed nine new ones in states around the country, including Alabama, Alaska, Arkansas, Florida, Idaho, and Kentucky. WHD has also deepened its relationships across the board by improving information sharing practices and discussions on addressing misclassification.

This work has yielded very tangible results. In 2014, WHD investigated construction companies in Utah and Arizona whose business model had deliberately misclassified construction workers. One day they were employees, the next they were doing the same work but were required to become "member/owners" of limited liability companies. Through our efforts in collaboration with other federal and state agencies, more than 1,000 construction workers were paid over half a million dollars in back wages and damages and, more importantly, had their workplace protections restored by being reclassified appropriately as "employees." In the aftermath of this settlement, the CEO of one of the companies transformed his thinking and his business. At our Future of Work Symposium, this CEO participated on one of our panels, sitting alongside the very same Department officials who pursued the case against him. He explained that, along with

properly classifying his workers as employees, he changed practices for job site monitoring and invested in his workforce. As a result, his worker turnover rates have plummeted while productivity has increased. The high road turned out to be the smart road for this CEO, increasing company profitability and market share.

To make sure the basic fairness bargain of the American economy is maintained, consistent with President Obama's direction to modernize existing overtime regulations while making them easier to understand and apply in the workplace, we are also using our regulatory authority to update the rules governing which "white collar" workers qualify for overtime pay. The white collar exception to overtime eligibility originally was meant for highly-compensated employees, but the regulations now apply to workers earning as little as $23,660 a year – below the poverty line for a family of four. This is a question of basic fairness. When I was growing up, if you were a manager at a store, you had every expectation of being in the middle class. But over a period of decades, we've allowed overtime rights to become diminished, creating real economic anxiety and hardship for American families. Our goal is to modernize the regulations to ensure that the Fair Labor Standards Act's (FLSA's) intended overtime protections are fully implemented, and to simplify the identification of overtime-eligible employees, thus making the white collar exemptions easier for employers and workers to understand.

In July 2015, the Department announced a proposed rule that would extend overtime protections to millions of additional white collar workers. The proposed regulation is a critical first step toward ensuring that hard-working Americans are provided the protections that they are entitled to in our modern economy. In drafting the proposed rule, Department staff conducted unprecedented levels of outreach, holding extensive listening sessions with employers and workers in a wide array of industries. Issuing a final rule is a top priority.

Overtime and minimum wage protections are also critical for the nation's home care workers, who provide essential services to seniors and individuals with disabilities. In 2013, the Wage and Hour Division issued a final rule requiring that nearly two million workers – home health aides, personal care aides, and certified nursing assistants – have the same basic overtime and minimum wage protections already enjoyed by most workers. Consistent with our compliance efforts, the Department has undertaken an unprecedented implementation program to help employers of home care workers prepare for FLSA compliance, including an extensive and individualized technical assistance program, a 15-month period before the effective date of the Final Rule and a time-limited non-enforcement policy. The Department's home care rule was challenged, but in August 2015 the U.S. Court of Appeals for the DC Circuit overturned a lower court decision and upheld the Department's rule. As a result home care workers across the country are receiving minimum wage and overtime, including roughly 400,000 in California, where on February 1 the state began implementing important policies to provide workers these basic protections. Many other states are making significant progress on compliance and WHD continues to provide technical assistance to states and other entities.

To continue moving the agency in a strategic direction and adapting to the realities of today's workforce, the FY 2017 WHD budget request builds on past successes and aims for greater data-driven, strategic decision-making. This includes nearly $30 million for 300 additional enforcement staff to address systemic compliance problems more strategically. As a data-driven

and evidence-based agency always seeking to improve program performance and better target our work, WHD also seeks $3 million (and 12 economists and data scientists) to further develop the use of data, analysis and evaluations in strengthening the effectiveness of our enforcement, regulatory, and wage determination programs.

WHD is also focused on implementing other key priorities to create a more inclusive economy based on shared prosperity – ensuring opportunities for employment, higher wages, fairer pay, safer workplaces, and workplace flexibility for parents.

President Obama has repeatedly called on Congress to give millions of hard-working people a raise by increasing the national minimum wage. To date, Congress has failed to act; but the President has used his authority to raise the pay of as many workers as possible. In February 2014, the President signed Executive Order (EO) 13658 to raise the hourly minimum wage to $10.10 for workers employed on or in connection with covered federal contracts. On October 1, 2014, WHD issued a final rule to establish standards and procedures for implementing and enforcing the EO, which took effect for new contracts as of January 1, 2015. Pursuant to the EO, WHD later published an inflation-adjusted wage effective this year that raised the minimum wage from $10.10 to $10.15. Boosting these workers' wages not only puts more money in the pockets of almost 200,000 people; it also lowers worker turnover, boosts morale and productivity, and improves the quality and efficiency of services provided to the government.

The Department is also helping workers by ensuring that federal contractors are adhering to the law and playing by the rules. For example, we are in the process of finalizing guidance to assist in implementing a July 2014 EO that helps agencies better take into account prospective federal contractors' records of compliance with key labor and employment laws when awarding covered contracts. Additionally, many federal contract workers will be given the necessary information each pay period to verify the accuracy of their paycheck. And by putting an end to certain mandatory arbitration agreements, it gives federal contract workers who may have been sexually assaulted or suffered civil rights violations their day in court.

The social compact must also include the ability for our citizens to hold a job and care for themselves and for their families. But our laws today do not adequately recognize how challenging it is to work full-time while taking care of children, aging parents, family members with disabilities, or others. Studies show that paid leave increases employee morale and retention. It also increases the likelihood of a parent returning to work after the birth of a child, without an adverse effect on productivity or business operations. Yet, the U.S. remains the only advanced economy on earth without some form of national paid leave.

On Labor Day of 2015, the President signed an EO that will allow workers performing on or in connection with covered federal contracts to earn up to seven paid sick days per year. Once final regulations are issued, this EO will allow workers to use paid sick leave to care for themselves or a family member. It will also allow workers to use paid sick leave for absences resulting from domestic violence, sexual assault, or stalking. The EO will provide additional paid sick leave to an estimated 828,000 people, including nearly 437,000 who currently receive no paid sick leave. This is not just the right thing to do; it is the smart thing to do. Many businesses have demonstrated that offering paid sick time doesn't just help their workers; it also improves the

bottom line. The NPRM to implement the EO was published in the *Federal Register* on February 25, and we fully expect to issue a final rule by the September 30, 2016 deadline set forth in the EO.

The Women's Bureau also plays a significant role in addressing this challenge, pioneering new tools like its Paid Leave Analysis Grant Program, which awarded over $1.5 million to states, territories and municipalities in 2015 to examine the feasibility of paid leave strategies and programs. The Bureau will continue to support state and local momentum fostered by the first two years of grant funding, dedicating $1 million in 2016 and requesting an additional $1 million in FY 2017 to further expand this program.

The Bureau strives to support women's economic security; but the typical woman working full-time, full-year, still makes only approximately 79 cents for every dollar the typical man earns. This pay gap is unacceptable and this Administration, with the Department of Labor playing a key role, has been resolute in implementing policies to bring greater fairness to the pay of working women. Since 2010, members of the White House National Equal Pay Task Force, the Department, and the Equal Employment Opportunity Commission (EEOC) have been working collaboratively on pay discrimination issues. One of the issues we've explored is how better data can help close the pay gaps that persist between gender, racial, and ethnic groups. On January 29, 2016, the EEOC, in coordination with our Office of Federal Contract Compliance Programs (OFCCP), proposed collecting aggregate pay data through an existing employer report. Access to these aggregate data will provide EEOC and OFCCP with much needed insight into pay disparities across industries and occupations and strengthen our efforts to combat discrimination. Employers can also use the data to proactively review their pay data and practices.

To improve workers' ability to advocate for their rights and report possible pay discrimination, in April 2014, President Obama signed EO 13665, directing the Department to issue regulations prohibiting federal contractors from discriminating against employees or job applicants for inquiring about, disclosing, or discussing compensation. In September 2015, OFCCP issued a final rule to protect workers who seek more information about their own pay and that of their co-workers.

In January 2015, OFCCP proposed replacing its outdated 1970s Sex Discrimination Guidelines with new regulations that reflect modern workforce and workplace realities. This proposal addresses many of the barriers to equal opportunity and fair pay that workers face -- pay discrimination, sexual harassment, lack of accommodations for pregnancy, childbirth and related conditions, and gender identity discrimination. We anticipate issuing a final rule shortly.

In addition to working for greater pay equity for women, OFCCP's enforcement work also includes removing barriers to equal employment opportunity for veterans and individuals with disabilities, a robust program prioritizing systemic pay discrimination, and the implementation of new mandates addressing LGBT discrimination. During this Administration, OFCCP has strengthened its civil rights enforcement program; modernized its guidance; strengthened efforts to facilitate voluntary compliance; and built partnerships to enhance those efforts.

From January 2009 through December 2015, OFCCP compliance officers reviewed over 27,000 federal contractor establishments employing more than 11 million workers. During the same time period OFCCP cited contractors for discrimination violations in 553 cases. Through conciliation efforts, OFCCP recovered $71.1 million in back pay for 133,000 workers who were unfairly subjected to discrimination, and negotiated more than 11,900 potential job offers.

OFCCP has also placed a premium on addressing systemic pay discrimination. Since FY 2010, when President Obama launched the Equal Pay Task Force, through the beginning of FY 2016, OFCCP has recovered over $5.5 million for nearly 3,000 workers who were paid unfairly. Last year, OFCCP resolved systemic pay discrimination violations in STEM occupations with a settlement providing $234,895 to 72 female and Black workers at Savannah River Nuclear Solutions.

Fairness dictates that we do more to ensure that the workforce reflects the full diversity of our citizenry, including those with disabilities. Along with OFCCP, our Office of Disability Employment Policy (ODEP) also continues to work to fully include the nearly 30 million Americans ages 16 and older with disabilities in our workplaces. The high unemployment and low labor force participation rates of people with disabilities create an urgent need for a coordinated and focused strategy to help these workers find quality careers with sturdy ladders to the middle class. ODEP advises Department agencies on how labor policies affect people with disabilities, coordinates disability employment policy across federal programs, and provides technical assistance to employers.

Over the course of four years, through our Employment First Initiative, ODEP has provided technical assistance to 43 states, so they can align their policies and funding to help workers with significant disabilities find jobs with competitive wages in integrated settings. ODEP's Employment First national web portal provides both national- and state-level data to assist and monitor systems change across the nation in this area.

Working with our partners at the Department of Education, HHS and the Social Security Administration, ODEP developed and published a government-wide strategic plan to improve federal service delivery to youth with disabilities, so they can transition into high paying jobs with career pathways. Many of the strategies in this plan come directly from ODEP's Guideposts for Success, a widely adopted framework used by youth, their families, state policymakers, local administrators, and youth service providers.

ODEP and ETA, along with the Department of Education, continue to work together to implement WIOA and improve the workforce system's services to workers with disabilities who are unemployed, underemployed or receiving Social Security benefits. Already, we have funded 43 projects in 27 states through the Disability Employment Initiative (DEI), strengthening coordination and collaboration in state and local employment and training programs to improve the education, training, and employment outcomes of youth and adults with disabilities (including individuals with significant disabilities). ODEP also successfully established the WIOA Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities, which has held seven public meetings and issued an interim report with

recommendations for improving job opportunities for people with significant disabilities. A final report will be issued in September 2016.

Improving and Protecting Worker Safety and Health

The Department remains committed to the goal that every worker returns home at the end of the day – safe and sound to his or her family. The work of the Occupational Safety and Health Administration (OSHA) and Mine Safety and Health Administration (MSHA) reflect the Administration's commitment to ensuring the protections we enforce are relevant to today's workplace and workforce.

Over the last seven years, OSHA has made steady and important progress to improve the health and safety of millions of workers. With enhanced enforcement initiatives, updated standards, and improved training, compliance assistance and cooperative programs, OSHA has reached millions more workers and employers than ever before.

While most employers strive to make their workplaces safe, there are still too many who ignore workplace safeguards, or whose health and safety program is based on the hope that their luck will hold out and no one will get hurt. For these employers, a strong enforcement program is the best way to ensure compliance with the law. In this Administration, OSHA has conducted roughly 230,000 workplace inspections and implemented a new special enforcement program to focus on recalcitrant violators who repeatedly endanger workers. OSHA has used its enforcement tools and also worked with industry associations and worker advocacy groups to ensure that temporary employees receive the same safety protections as permanent employees.

OSHA has a balanced approach to health and safety. In addition to enforcing standards, OSHA has greatly expanded its capacity to provide guidance to workers and employers seeking assistance in complying with OSHA regulations and standards. Over a quarter of a million calls came in to the OSHA 800 number, with almost 17,000 questions submitted by email, in FY 2015. Over 826,000 workers completed the OSHA Outreach Training Program, while over 52,000 students received instruction at OSHA's Training Institute Education Centers. Over 5,000 outreach activities were held across the country by OSHA's Regional and Area Offices, reaching 2.4 million employers and workers. OSHA's website, which receives over 200 million visits annually, now has pages devoted to young workers and Hispanic workers.

OSHA's free and confidential On-Site Consultation program conducted over 27,800 visits to small and medium employers in FY 2015. More than 1.4 million workers were reached and more than 140,000 hazards reduced as a result of these visits. Other cooperative programs -- OSHA's Voluntary Protection Program and Safety and Health Achievement Recognition Program, in addition to the Strategic Partnership program and the Alliance Program -- all contributed to OSHA's efforts to work with workers, employers, unions, trade organizations and other stakeholders to reduce fatalities, injuries and illnesses.

In one of our most important efforts, OSHA is in the final stages of issuing a new standard to protect workers against silica exposure. The long-overdue update to this 45-year-old standard

will prevent hundreds of worker deaths from silicosis, lung cancer and other diseases every year. The standard is expected to be issued shortly.

OSHA's new severe incident reporting regulation, which took effect in January 2015, updated employer reporting requirements to enable OSHA to engage with employers who have had a serious incident, either through an inspection or a Rapid Response Investigation (RRI). The regulation is making OSHA aware of issues they otherwise would not have known about. In the first full year of the new requirement, employers submitted 10,388 reports of severe injuries, including 7,636 hospitalizations and 2,644 amputations. The RRI encourages employers to conduct an analysis of the hazards in their workplace and develop a process to address them.

OSHA has notably strengthened the protection of whistleblowers during this Administration, creating a new Directorate for the program, greatly increasing whistleblower staff, and significantly expanding training and guidance for whistleblower investigators. Although the program, which enforces 22 laws, continues to struggle with resources, OSHA is now completing ten times as many whistleblower investigations as it completed in 2007. And since FY 2009, OSHA has awarded over $153 million dollars to whistleblower complainants.

This Administration has also finalized rules for safety and health standards dealing with hazard communication, cranes and derricks, recordkeeping and confined spaces in construction and shipyards. OSHA has also harmonized chemical labeling practices, and we expect to continue to do even more – modernizing our recordkeeping and reporting system; updating requirements to protect workers from slips, trips and falls; making progress on improving protections for workers exposed to beryllium; and, helping workers exposed to infectious diseases, combustible dust, and other hazards.

MSHA has a proud history of protecting the nation's miners. I have said many times: a miner should not have to die for a paycheck. We owe the nation's miners that much. For nearly 40 years, MSHA has enforced the federal mine safety and health laws and conducted other activities to improve working conditions for miners. And since 2009, the result has been real progress, including historically low mining deaths and injuries. We've also seen a substantial reduction in the number of "bad actors" that consistently violate the law, improved compliance with the Mine Act, and reductions in the unhealthy mine dusts that lead to pneumoconiosis, also known as black lung disease. MSHA has also taken a number of meaningful actions to protect miners who speak out about hazardous conditions, including filing a record number of discrimination cases on their behalf.

MSHA has made substantial progress since the tragic disaster at the Upper Big Branch mine in April 2010, by completing 100 percent of its mandatory inspections; reducing the universe of chronic violators; improving compliance at mines with safety and health problems; taking a strategic approach to regulation that emphasizes rules with the biggest impact on mine safety and health; and increasing outreach to and cooperation with the mining community.

MSHA has also taken historic steps toward eliminating the black lung disease that has claimed the lives of more than 76,000 coal miners since 1968. MSHA launched the End Black Lung-Act Now Campaign in 2009, an ambitious effort combining enhanced enforcement, rulemaking,

education and outreach. Thanks to MSHA's work, the yearly average of respirable dust samples for the dustiest occupations has dropped to historic lows each year, as has the average concentration of silica, which causes silicosis. The cornerstone of MSHA's campaign to eradicate black lung disease is the historic step we took to finalize the first update in decades to the standard that protects miners from exposure to respirable coal mine dust. This complex rule – Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors – was finalized in the spring of 2014. I will never forget my meetings with families whose lives have been devastated by this disease. When I traveled to Morgantown, West Virginia for the announcement of the final rule, I heard from Carol Miller, whose husband had recently died from black lung after working in the mines since he was 18. Carol described the heartache of watching him suffer and decline. All the things he loved to do, even something as simple as walking to the end of the driveway to get the mail, were taken away from him.

The respirable dust rule is just one of nine rules finalized by MSHA since 2009 to improve miners' safety and health. For example, just this past year, MSHA issued a final rule requiring operators to install life-saving proximity detection systems on continuous mining machines in underground coal mines, to avoid crushing accidents that cause death and injuries to coal miners.

Throughout the Obama Administration, MSHA has made it a priority to protect miners who speak up about unsafe workplace conditions. During its Upper Big Branch investigation, MSHA discovered that many miners employed there, including some of the victims, were afraid to speak out about hazardous conditions for fear of losing their jobs. So since 2010, MSHA and the Solicitor of Labor have filed historic numbers of discrimination complaints, including actions for temporary reinstatement, on behalf of miners who have faced retaliation for making hazardous condition complaints and engaging in other protected activity.

By far the most important measure of MSHA's success is, quite simply, how many miners return home at the end of their shift free of injury or illness. Sometimes a single day can remind us of the hard work necessary to ensure that miners can go home at the end of each shift safe and healthy. The metal and nonmetal industry experienced a day last August in which three miners lost their lives in separate incidents in Nevada, North Carolina and Virginia. In response, MSHA stepped up enforcement efforts and intensified outreach and education nationwide, including inspections with a focus on violations commonly associated with mining deaths, and MSHA tapped inspectors and training and educational personnel to share information on fatalities and the best practices for preventing them. Thanks to those efforts and the response of industry, fatalities reached an all-time low of 28 in 2015 (11 in coal and 17 in metal and nonmetal). MSHA is committed to working even harder to improve safety and health, to diligence and vigilance about enforcing the law against those operators that fail to protect their miners.

The mission of the Department's Office of Workers' Compensation Programs (OWCP) is to protect the interests of workers who are injured or become ill on the job, by making timely and accurate decisions on claims, providing prompt payment of benefits, and helping injured workers return to gainful work as early as possible.

Over the course of this Administration, OWCP has been successful in increasing the two-year return-to-work rate for seriously injured non-postal federal employees from 85.8 percent in 2009 to 88.02% percent in 2015. In addition, OWCP has worked with our partner agencies, as well as OSHA, to reduce the Lost Production Days (lost days per 100 employees) from 35.8 in 2009 to 30.4 in 2015.

OWCP has improved the quality of its claims processing and decision making in the Black Lung Program, which has seen a sustained increase in claim filings over the past several years. OWCP has taken an aggressive approach to handling not only this higher volume of claims, but also a decrease in qualified physicians available to conduct the complete pulmonary evaluations provided by the Department to every miner who files for benefits. Physician access is challenging given the geographic isolation of the claimant population. OWCP's FY 2017 budget request for a Coal Miner Health Initiative will help recruit and train highly-skilled physicians and modernize medical treatment authorization and bill payment processes. The request will also allow us to build and promote web-based communication portals to provide all parties and their authorized representatives with on-demand information about the status of their claims.

OWCP has also taken many steps to improve the quality of medical evidence used in claim determinations. OWCP issued regulations in 2014 setting quality standards for the administration and interpretation of digital chest x-rays. This rule significantly expanded the number of facilities that can perform chest x-rays, a key diagnostic test used in determining entitlement.

Providing for a Secure Retirement

The Department's Employee Benefits Security Administration (EBSA) is committed to educating and assisting the 143 million workers, retirees and their families covered by approximately 681,000 private retirement plans, 2.3 million health plans and similar numbers of other welfare benefit plans holding approximately $8.5 trillion in assets. Throughout this Administration, EBSA has advanced its mission of protecting the security of retirement and health benefits through a combination of compliance assistance, regulations and enforcement. Advancing this mission – as much as any in the Department – has meant reconciling how we do our job with the rapid changes in the economy. Saving for a dignified retirement in the 21st century bears little resemblance to the path to a secure retirement in the generations before. I am proud of the work that this Administration has done to realign the social compact to account for these changes and reimagine how to help workers plan for their golden years.

One of the highest priority projects on EBSA's retirement agenda has been completing a rule, first proposed in 2010, aimed at ensuring that financial advisers act in the best interest of their clients. This conflict of interest rule clarifies the scope of the definition of a fiduciary, so that it clearly includes brokers and others giving investment advice to employees in 401(k) plans, IRA owners, other retirement savers and certain plan sponsors. The final rule and exemptions will reflect feedback from a broad range of stakeholders—including industry, consumer advocates, Congress, retirement groups, academia, other regulatory agencies and the American people. The Department expects to issue a final rule and related exemptions soon.

In October 2015, EBSA released guidance clarifying that an ERISA pension plan can invest in projects or companies that serve the common good, while keeping at the forefront the fiduciary obligation to invest prudently and for the exclusive benefit of retirees and workers. The guidance also acknowledges that environmental, social, and governance factors may have a direct relationship to the economic and financial value of an investment. And when they do, they are proper components of the fiduciary's analysis of the economic and financial merits of competing investment choices.

EBSA's initiatives also help promote additional savings options. One-third of American workers do not have access to a retirement savings plan through their employers. To increase access, President Obama directed the Department to support the growing number of states trying to promote broader access to workplace retirement saving opportunities. In November 2015, EBSA published a proposed regulation that would facilitate state-administered payroll deduction programs. Employers required by such programs to automatically enroll employees in individual retirement accounts would not be treated as sponsoring ERISA plans. EBSA also released accompanying guidance to help states interested in helping their employers establish ERISA-covered plans for their employees.

Additionally, in order to promote innovation and access, the President's 2017 budget includes a proposed new grant program that will allow states and nonprofits to test more portable approaches to providing retirement and other employment-based benefits. The goal is to encourage development of new models that allow workers to carry benefits from job to job and that can accommodate contributions from multiple employers – something that is especially important in a changing economy.

The 2017 Budget also includes a legislative proposal to allow multiple unrelated employers to come together and form pooled 401(k)s, leading to lower costs and less burden for each employer individually. Through these "open multiple employer plans" (open MEPs), more small businesses should be able to offer cost-effective plans to their employees, while certain nonprofits and other intermediaries could create pooled plans for contractors and other self-employed workers. As an added benefit, employees moving between employers participating in the same open MEP can continue contributing to the same plan – and receiving employer contributions – even if they switch jobs. And independent contractors participating in a pooled plan using that structure can contribute no matter which client is paying them.

Thanks to the Affordable Care Act (ACA), 20 million Americans have gained health coverage and the nation's uninsured rate is now below 10 percent for the first time ever. The ACA assigned the Department significant new responsibilities, as we continue to develop and implement insurance market reform regulations in conjunction with the Department of Treasury and HHS. Over the next year, the Department intends to continue implementing the ACA and related health coverage reforms, like the Mental Health Parity and Addiction Equity Act.

EBSA has had tremendous success protecting employee benefits through both civil and criminal enforcement actions. EBSA's efforts in both areas achieved total monetary results in FY 2015 of over $696 million and $8.1 billion since the beginning of FY 2009, which includes technical prohibited transactions and plan assets protected. When only including results from

investigations that directly impacted plans, participants, and beneficiaries, EBSA has returned more than $1.7 billion to participants, beneficiaries, and plans. EBSA's criminal enforcement program has referred 1,660 criminal cases for prosecution, leading to the indictments of 712 individuals.

EBSA's Benefits Advisors also provide assistance, education, and outreach for workers, retirees, and their employers. Since the beginning of FY 2009 through the end of FY 2015, Benefits Advisors have used informal complaint resolution to help more than 906,000 participants recover more than $2 billion out of the $8.1 billion that EBSA achieved in monetary results. Benefits Advisors have also conducted more than 12,500 education, outreach, and compliance assistance events for over 900,000 people.

Worker Voice

The Department cannot be the only guarantor of fairness in the workplace. Workers themselves, in partnership with the vast majority of employers who want to do the right thing, have an important role to play in ensuring that the promise of the social compact is real. One of the best ways to strengthen the middle class is to ensure that workers have a voice on the job. Traditionally, labor unions and collective bargaining have been the primary vehicle of worker voice. But worker voice can be expressed many ways and take many forms. Last October, the Department played a key role in convening the White House Summit on Worker Voice. At this first-of-its-kind event, stakeholders of all kinds – workers, employers, labor leaders, academics, economists, non-profits and more – came together for a robust conversation about how we adapt worker voice for the 21st century. We will continue to facilitate this conversation for the good of the workers themselves, but also for their employers and the economy as a whole.

Over the course of this administration, the Office of Labor-Management Standards (OLMS) has safeguarded worker voice by making great strides in: efficiently and effectively increasing transparency in labor union, employer, and consultant operations; advancing and ensuring integrity in labor union finances; and increasing democracy in union elections. Despite fewer resources, OLMS has continued to achieve a high rate of indictments and convictions. Between January 2009 and December 2015, OLMS investigations resulted in 789 indictments and 766 convictions. These cases resulted in restitution amounts of approximately $32.8 million paid or ordered to be paid. OLMS is getting better and better at discerning which unions are the most vulnerable to embezzlement and auditing those unions first.

Beginning in 2009, OLMS identified a number of opportunities for improvements in program operations and common-sense reforms. Before 2009, union officers and delegates could file their reports electronically but they were required to incur significant expenses for digital signatures. To address this cost and burden, OLMS changed to a cost-free PIN and password security system and adopted HTML-based forms, which can be used by all browser software. These changes led to a steady increase in the percentage of users filing electronically: from 20 percent in 2009 to 48 percent in FY 2015. OLMS is working toward making e-filing possible for all forms. The agency continues to provide outreach and technical assistance to help unions with on-line filing, thus increasing transparency for the public, easing the filing burden for union officials and reducing government costs.

OLMS has also prioritized technical outreach. For example, in 2009, it launched the Voluntary Compliance Partnership (VCP) program, which provides technical and compliance assistance to international/national unions who then work with affiliates at the regional and local level, thus leveraging OLMS resources in the most cost-effective manner. The VCP program now includes 43 unions, exponentially increasing OLMS' compliance assistance reach to over 16,000 local unions.

OLMS has also proposed a rule seeking to reform the reports filed by labor relations consultants and employers when, in a typical scenario, they make arrangements to counter a labor union organizing drive. The proposed rule would require that employers and consultants report whenever the consultants engage in indirect, as well as direct, persuader activities. This way, workers know that the underlying source of the employer's anti-union campaign is a paid outsider. A final rule is currently under interagency review.

Our effort to ensure workers have a voice in the workplace extends beyond our borders. The Bureau of International Labor Affairs (ILAB) leads the Department's efforts to promote workers' rights abroad and level the playing field for American workers at home. Because of ILAB's leadership, more workers are afforded rights and protections consistent with international labor standards. Fewer children are trapped in exploitative child labor. Fewer workers are trafficked into forced labor. And more families have decent livelihoods within their reach. ILAB has made this progress through negotiation, monitoring, and enforcement of trade-related labor obligations, as well as technical assistance, policy engagement, and research.

ILAB has been integral to the Obama Administration's historic free trade negotiations and enforcement actions, including: the groundbreaking April 2011 Colombian Action Plan Related to Labor Rights; the first-ever labor case under a U.S. free trade agreement (FTA), against Guatemala under the Dominican Republic-Central America Free Trade Agreement (CAFTA-DR); the December 2015 Monitoring and Action Plan (MAP) with Honduras to improve Honduran workers' rights under CAFTA-DR; the strongest FTA labor provisions in history in the Trans Pacific Partnership (TPP); and TPP consistency plans with Vietnam, Malaysia, and Brunei Darussalam that detail reforms those countries must make for their labor law and practices to conform with TPP requirements.

In 2014, ILAB launched a Labor Attaché Program to post ILAB personnel in nations – preference program beneficiaries and trade agreement parties -- with important labor challenges. The attachés – currently in Bangladesh and Colombia and soon-to-be-added in Vietnam and Honduras – are enhancing ILAB's capacity to monitor and enforce trade-related labor requirements.

ILAB has complemented these efforts with targeted, comprehensive technical assistance to help U.S. trading partners comply with FTA obligations, especially through strengthened labor law enforcement. During this administration, ILAB has invested more than $100 million in technical assistance activities, including trade-related labor capacity building projects in U.S. FTA partners, including Colombia, Jordan, Mexico, Morocco, and Peru. That includes a $7 million project in Honduras to help implement the MAP.

During the Obama Administration, ILAB has remained the world's largest funder of projects to combat the worst forms of child labor, adopting a holistic approach to ensure sustainable efforts that address child labor's underlying causes. These projects provide children engaged in exploitative labor, or at risk of entering child labor, with education and vocational training. They also provide livelihood services to vulnerable families, as well as training for labor inspectors and law enforcement officials on countries' child labor laws.

ILAB has invested significantly during this Administration to make its research and reporting a more valuable policy tool, a foundation for engaging governments on labor concerns and a basis for evidence-based decision-making. ILAB's annual flagship report, the *Findings on the Worst Forms of Child Labor*, evaluates approximately 140 governments' efforts to combat child labor. This Administration expanded the report to include country-specific assessments of progress and concrete recommendations for improvements. In 2015, ILAB launched the U.S. government's first mobile app and open data on human rights -- *Sweat & Toil: Child Labor, Forced Labor, and Human Trafficking around the World* -- making ILAB research more widely and easily accessible.

The President's 2017 Budget request will strengthen ILAB's efforts to monitor and enforce the labor provisions of new and existing free trade agreements, while increasing the amount of funding for capacity-building technical assistance to help U.S. trade partners meet their labor obligations under FTAs. This will more than double the number of staff working on the monitoring and enforcement of labor provisions of FTAs. It also restores the $5 million cut from FY2015 levels for technical assistance and increases the minimum amount of technical assistance grants required for workers' rights by $3 million.

Measuring Our Work

To assure Congress and the American people that the Department is a strong steward of taxpayer dollars, it is critical that we measure the effectiveness and impact of our programs. The Chief Evaluation Office (CEO), the first ever in a cabinet agency, coordinates the Department's evaluation agenda: designing, initiating, and carrying out the most rigorous and credible evaluations possible to accumulate evidence on the performance, outcomes and impacts of our programs. Consistent with professional evaluation practices and the federal government's guidelines around scientific integrity and a commitment to evidence-based policy, the CEO is an independent evaluation office, with rigorous, independent, third-party evaluations and the open and transparent release of reports.

The CEO has expanded in size and scope since it was established in 2010, thanks largely to Congress' establishment of budget set-aside authority for CEO evaluations. Several of our agencies also have evaluation or research and analysis activity, now carried out in collaboration with the CEO, and nearly every competitive grant program has an evaluation component so we can learn "what works". The CEO also houses the evidence-based evaluation clearinghouse (CLEAR: The Clearinghouse for Labor Evaluation and Research), which coordinates with clearinghouses operated by other federal departments.

The Department's reputation as a leader on evidence and evaluation continues to grow. The *Results for America 2015 Evidence Index* rated us the top agency on using evidence and evaluations, and the White House Initiative on Evidence recognizes the Department's commitment to evaluation and data as a model for other agencies. Some examples of a few policy-relevant studies include: the Evaluation of Employment Services for Veterans, a Survey of the Accessibility of American Job Centers to Persons with Disabilities, and an Evaluation of OSHA's Voluntary Compliance Assistance to Firms.

Evidence also includes statistical analysis. The Bureau of Labor Statistics (BLS) is the principal federal statistical agency responsible for measuring labor market activity, working conditions and price changes in the economy. Its mission is to collect, analyze, and disseminate essential economic information to support public and private decision-making. Since 2009, BLS has more than doubled the number of indexes, estimates and other published information it produced each year. For example, the Current Population Survey (CPS) added tables on veterans, persons with disabilities and the foreign-born to the monthly *Employment Situation* news release. The CPS expanded its annual report on labor force characteristics by race and ethnicity to include data on American Indians and Alaska Natives, Native Hawaiians and Other Pacific Islanders, as well as persons of two or more races. Detail on labor force characteristics of Hispanic and Asian groups was also added to the report.

The Consumer Price Index added 11 new indexes in an effort to break out more consumer goods and services. The Office of Price Statistics introduced experimental disease-based price indexes to provide alternative inflation estimates for medical output and consumption. These indexes give data users additional ongoing information about the evolution of the nation's healthcare system. Also, the Employee Benefits Survey published data on employer-sponsored benefits extended to unmarried domestic partners.

Across programs, BLS continues work on the expanded use of "big-data" sources and techniques. Examples of projects underway include: expanding the use of machine-coding for text fields like occupation titles; web-scraping for product price and quality data; and matching data collection efforts with administrative data. BLS also has enhanced the accessibility of its data by adding new interactive charts and other visualization options for many of its publications, releases and data series.

The 2017 President's Budget will allow BLS to continue the production of data series while supporting several new products. That includes an annual supplement to the CPS to collect information relevant to labor force trends, like the growth of the on-demand economy and the growing relevance of work-life balance issues. The Budget also includes funding for the first year of activities for a Survey of Employer-Provided Training, which will fill a key gap in knowledge about the workforce system. The Budget includes funding for the modification of the Consumer Expenditure Survey, to support the Census Bureau in its development of a statistical poverty measure to complement the standard measure Census has used since the 1960s.

A Strong and Engaged Workforce and Modernized Information Technology

The Department cannot accomplish its goals without maximum engagement of its greatest resource: our workforce. The career staff of DOL is the spine of this agency, and it will be responsible for implementing this Administration's initiatives long after I am gone. When I started at the Department in July 2013, we were tied for second-to-last among large federal agencies in the Partnership for Public Service's Employee Viewpoint Survey. I am proud that we have been the "most improved" large agency in the federal government two years in a row, moving from 17th place out of 19 large agencies to 8th. This progress is a testament to our commitment to listen to our workforce at all levels of the organization, finding ways that we can better support them to get their jobs done – whether it involves flexible schedules, more training, new leadership programs, or innovative ways to accomplish the work. A skilled, committed, and engaged workforce with high job satisfaction will be best able to implement the Department's mission over the long term.

Updates to the Department's information technology goes hand-in-hand with our ability to realize greater resource efficiency, provide the public with digital services akin to those of the private-sector, and protect citizens' data. Over the past few years, DOL has successfully implemented several Department-wide efficiency, productivity and security improvements with limited IT Modernization funding, including moving our entire workforce to commercial cloud email services, and initiating the "IdeaMill" employee suggestion box, which helped DOL improve its standing as a desirable place to work.

However, DOL faces severe risks by the continued degradation and failure of the existing outdated legacy network infrastructure. The fragile and outdated network infrastructure poses a reliability and security risk for all DOL agency operations and undermines the Department's ability to do its work. To this end, the FY 2017 Budget request includes $63 million to modernize and transform our aging IT infrastructure. These investments are vital to the Department's effort to develop up-to-date communications capabilities, so we can provide better, faster, smarter service to the American public, while ensuring the security of its systems.

Conclusion

I am proud of what we have built at the Department of Labor over the course of this Administration. I believe our record of accomplishment is impressive, but our agenda for the remaining year is also ambitious. There are 310 days until the weekend, and I intend to sprint to the very end. The important unfinished business demands that we do nothing less. I am eager to continue this work – to build on this strong recovery, to ensure that we create shared prosperity and an economy that works for everyone. And I look forward to doing that work with all of you. Thank you very much.

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Chairman KLINE. Thank you, Mr. Secretary, for your testimony, your kind words about my retirement. I find that when you announce your retiring, you get friends everywhere and I do not understand exactly what that means.

Let me start, Mr. Secretary, by thanking you for your support and your hard work as we push through the bipartisan *Multiemployer Pension Reform Act* in the closing days, literally, of 2014, December.

I think that action has helped secure the retirement of millions of workers and retirees, and you and the rest of the Administration were instrumental in its passage. Our work is far from over. As the administration noted in its budget, further reform is needed to strengthen the finances of the Pension Benefit Guaranty Corporation, which you chair. We share the administration's commitment to ensuring that this important Federal backstop is well funded, but we need to do even more, so I am committed to working with you and Treasury Secretary Lew, Ranking Member Scott, and others to reach an agreement on a package of reforms that will shore up the PBGC and give employers and workers options for new benefit plans, such as composite plans. So I am committing to you and to my colleagues here that I am fully engaged in trying to get this done, but time is growing short, so I am asking for your commitment, sir, to working with us to try to get these reforms finished this year.

Secretary PEREZ. We have had a number of conversations both with you and with Leader Pelosi and over at the White House and at the PBGC, and we have a team of folks that have already been engaged bicamerally and in a bipartisan way to address these issues. As you know, the multiemployer pension system at the PBGC is in the red in a big way and we recognize that there are many tough decisions to be made and we commit to building a big table so that we can have and continue the dialogue that we have been undertaking.

Chairman KLINE. And I appreciate that and I absolutely take you at your word. Just a reminder to all of us, this has to be a bipartisan effort, and we have to get with the program as they say because we are running out of time and it would be a shame to start all over. On another subject, we are looking at the joint employer policies and the discussions surrounding them that are coming from your department and from other agencies. The Equal Employment Opportunity Commission has filed an amicus brief with the National Labor Relations Board and the Browning Ferris supporting a broader definition of joint employer, wage and hour, and your department is engaged. I think the actions within your department as well as those taken by the NLRB and EEOC demonstrate that the administration is aggressively trying to expand the definition of joint employer across all labor and employment laws and, frankly, without concern for the negative impact of the franchise model that has served us so well.

I am greatly concerned by the likely impact of these efforts on workers and their employers, particularly smaller businesses. Can you explain DOL's role in what seems to be the administration's concerted effort to expand the definition of joint employer?

Secretary PEREZ. I would respectfully disagree that we have been attempting to expand the definition of joint employer. We have been applying joint employer both in the OSHA context and in the Wage and Hour context when the facts so support. So, for instance, we had a case involving a gentleman named Daquan Davis. He completed his Job Corps program, he got a job at Bacardi Rum down in Florida.

His first day on the job was his only day on the job because he was so ill-trained by the company, there was a job service through which he got the job, he was so ill-trained that he literally died on the job, day one. And our investigation in that case showed that both the staffing agency that placed him and the company where he died on their assembly line that day bore a responsibility, so those were the facts in that case. We follow the facts and go where the facts lead us.

Chairman KLINE. Well, that is kind of a scary story and one we do not like to hear, but I can tell you that there is a great deal of concern in the business community by franchisors and franchisees that it looks like there is an expansion of that definition. I understand the Wage and Hour Division requested a 22 percent increase in its budget, the largest increase within your department, and proposes to hire 300 full-time employees to develop "corporate and enterprise-wide" enforcement. What is meant by corporate and enterprise-wide enforcement?

Secretary PEREZ. Well, the Wage and Hour Division has a very critical mandate, and their mandate is to make sure that when you work a full day, you get paid a full day wage. We had a study conducted recently just in two States that showed that the amount of wage theft was $1 billion alone in the State of California and New York. Wage theft is a huge problem in this country. The Wage and Hour Division has worked very carefully and, by the way, very closely with employers because we get complaints frequently from employers about the fact that other employers are misclassifying employees and it creates an unlevel playing field because they cannot compete for contracts when you have someone else cheating, which is why we have memoranda of understanding with 29 States ranging from Utah, Texas, Arizona, to Massachusetts, as well. So I believe firmly in the work of the Wage and Hour Division and we work very collaboratively and when—

Chairman KLINE. Well, my time has expired, and I have got to gavel you and me down at the same time. I am re-expressing my concern about this increase in the number of employees and if the Wage and Hour might be contemplating the expansion of the enforcement of the franchisor/franchisee relationship. Those concerns remain, and I am sure we will continue to talk about it. Mr. Scott, you are recognized.

Mr. SCOTT. Thank you. Thank you, Mr. Secretary. You mentioned wage theft. How much of that is due to the fact that many employees do not even get a pay stub so they cannot calculate what their wages would be?

Secretary PEREZ. Well, that is certainly part of the challenge in wage theft, Congressman Scott, and I know when we commissioned that study, a lot of folks who are victims of wage theft do not even know they are victims of wage theft because they have a difficulty

figuring that out. We have 135 million workers, 7 million employers, and so trying to do the work in the Wage and Hour Division with the complement of resources we have creates challenges, undeniably.

Mr. SCOTT. Thank you. You had mentioned the Conflict of Interest Rule, one of the problems in the discussion is that the rule is not final. When can we expect a final rule?

Secretary PEREZ. Well, the rule was sent to OMB, I believe, six weeks ago or something like that. I may be off by a couple of weeks, so we hope to bring it to conclusion as soon as OMB completes their review, but sometime in the near future.

Mr. SCOTT. And an alternative was suggested one introduced by the gentleman from Tennessee. Are you familiar with that proposal?

Secretary PEREZ. Yes, I am.

Mr. SCOTT. Why is it insufficient?

Secretary PEREZ. Well, we have reproposed—the proposal right now is a reproposal because we introduced a regulation in 2010 and then we withdrew that regulation. And I made a commitment when I was nominated to take this slowly, build a big inclusive tent, listen to people like Congressman Guthrie, who had a concern about ESOPS. So we took ESOPS out of our proposal and we have moved forward in a very deliberate way, in a very inclusive way. And the problem right now that I have is we are six years into this and our goal here, our North Star, is to ensure that we have an enforceable best interest standard. And meaning no disrespect to Congressman Roe, for whom I have great respect, and others, I actually think that those bills actually move the status quo backward in material respects, and so we need to move forward and we have had a very inclusive process. Every time someone has said can you talk to one of my constituents, we have done it, and sometimes we have done it two, three, four times because every time I talk to someone, I learn more and we become more informed.

Mr. SCOTT. One of the groups that has the trouble getting jobs would be ex-offenders. What does your budget do to help ex-offenders find jobs?

Secretary PEREZ. We have a remarkable—one of the most exciting things about this job is really the bipartisan coordination that we have done through our so-called RExO grants which have enabled us to provide remarkable opportunities and, in addition to that, we have really been at the tip of the spear on innovation, so we have worked with cities and counties to put one-stop centers in city and county jails. We did that in Montgomery County when I was in local government and if I brought the warden here today, he would tell you that made his jail safer, that enabled people to get more jobs. And the most important thing we could do, or one of the most important things we can do, if we wanted to reduce recidivism is make sure that when people come out of jail, they have the skills to compete for the jobs of tomorrow, and so I am very excited about what we are doing. We work very closely with the Department of Justice as well, so that we can synergize our grantmaking, and we work with State and local partners, our nonprofit partners, our faith leaders as well, and we are making tremendous

progress, and our budget request does include funding to continue to ramp that up.

Mr. SCOTT. Thank you. Can you say something about the adequacy of criminal penalties and mine safety violations, particularly when someone knowingly violates safety regulations, placing workers at risk of serious injury or death?

Secretary PEREZ. Well, those issues are the case both in the OSHA context and in the MSHA context. We had a horrific case in the OSHA context where a worker was literally dissolved to death and as a result of that, there was a spill into the nearby lake. Our fine was something like $50,000 and the EPA fine for killing the fish was in the millions, so the fish had more protection than the people. And in the mine safety context, the Upper Big Branch disaster is probably a notable example of chronic negligence all the way up at the top of the organization. And the reason that happens in cases like that is because when you perceive that there is no more than a slap on the wrist, then you tend to violate the law. If you have a speed limit sign that says 45 miles an hour, parentheses, self-enforcement, you are going to have a lot of speeding.

Chairman KLINE. Gentleman yields back. Dr. Foxx?

Mrs. FOXX. Thank you, Mr. Chairman, and welcome Secretary Perez. I am extremely concerned by the Department's repeated delays in issuing regulations implementing the *Workforce Innovation and Opportunity Act*, or WIOA. You have been very complimentary about it, I appreciate the chairman's positive comments. The most recent delay of final regulation is even more concerning given the Department will be reviewing and approving State plans prior to the issuance of final regulations.

This includes negotiating levels of performance which will be used to determine whether a State meets the requirements of the law. It is outrageous that the Department would hold States accountable to rules that have not been finalized.

Given final regulations have yet to be issued, what basis is the Department using to approve State plans?

Secretary PEREZ. Congresswoman Foxx, as I mentioned to you in our phone call, we have been working very, very closely with States since the passage of WIOA, and I am very excited about the work that we have done. We did literally 41 pieces of operating guidance, 28 technical assistance webinars, and your teams have been involved in every step of the way.

The majority of WIOA is already in place. It was implemented a year ago. What remains are the accountability mechanisms. And the good news there is because of the work that we have been doing together with States and with the help of your teams, you look at the number of States, over 40 States have WIOA compliant State boards. Roughly half of the States have already prepared draft plans, and, most importantly, the stovepipe implosion that WIOA contemplates, making sure that we build one big sandbox of opportunity so it is not the Education Department one way and the workforce people another way, making sure we are working together. We have already issued State plan guidance that tells States what they need to do and we talk to them literally on a weekly basis. So I am very excited about the progress and I am very appreciative because the regulations were over 1,800 pages

and they took a lot of work and nobody took any Thanksgiving or Christmas holidays among our career teams and, frankly, I think WIOA is a good news story because we are moving forward, we are moving forward together. There is a ton of excitement in the field and I am very proud of the work that we are doing and we look forward to continuing that collaboration with you and others.

Mrs. FOXX. But, Mr. Secretary, these things are being negotiated one-to-one by you and I think that exhibits a cavalier attitude on the part of the Department regarding the *Administrative Procedures Act* and the requirements of the law relating to rulemaking. You know, Congress is prescribed a specific process for the promulgation of regulations to allow for public comment and congressional oversight. The de facto issuance of final regulations through the approval of State plans circumvents this process by making the rules effective before providing Congress with the opportunity to review them. And even in your own comments today, and I have made a list of things you all do, executive orders, guidance letters, program letters, notices, administrator's interpretation clarifying, memorandum, directives, reporting requirements, enforcement guidance documents, corporate and enterprise enforcement, technical assistance webinars you just mentioned, so all of this goes around the rulemaking process which we think you should be doing. And it appears to us that you do not want to publish official rules so that the public can comment on them. You do new programs—the chairman mentioned new programs that we see as a way to get around this and this morning, I had a meeting with a manufacturer from my district and he is on one of the boards and he said getting change on those local boards is like pushing a string.

That they cannot get the changes because they do not have the guidelines and the accountability measures. That is what we want to see, what are the accountability measures for these programs?

Secretary PEREZ. With all due respect, we have been anything but cavalier. We have been working relentlessly with States. And, as someone who ran a State agency, one of things that always disappointed me was when the Federal Government would issue guidance or regulations without including us, and so my direction to the team—and remember Congress debated the reauthorization of the *Workforce Investment Act* for 10 years and then after that 10-year discussion gave us 1 year to do everything that we needed to do and we built a very inclusive table.

The State plan guidance that I am referring to was made public and we took public comment on it. Our final rules will be out in June, and we have been working very closely with your teams, with others, and we have had a remarkably constructive relationship. There is no effort or intent to do anything other than make sure we implement every aspect of the *Workforce Innovation and Opportunity Act* to the fullest extent possible. And the good news, Congresswoman, is we are making tremendous progress. We are building that skills superhighway. We are building an ecosystem where for the first time in States across this country, you have the folks who administer TANF are talking to the folks who are doing education, are talking to the folks who do the workforce, and you see the number of States who are coming in with those unified plans. That is exactly what you wanted and that it is a good thing.

Mrs. FOXX. Thank you.

Chairman KLINE. The gentlelady's time has expired. Mr. Courtney?

Mr. COURTNEY. Thank you, Mr. Chairman, and thank you, Mr. Secretary, for your testimony and your, in my opinion, amazing service over the last couple of years. I appreciate your shout out to Katherine Hackett from East Haddam, Connecticut, who is really kind of an iconic story of the Great Recession, who again worked her whole life, raised two great sons who are officers in the U.S. military and, unfortunately, lost her job and was really struggling. The outreach, as you point out, in terms of helping her find the right connection as well as supportive employment programs which kind of gave the employer that extra boost to get her back into the workforce, which is not totally, withered away, and she is now employed full time doing a great job as a business manager at an orthopedic office which maybe your knee might get some consultation there if you need it. If you are in the territory.

Secretary PEREZ. I am taking notes.

Mr. COURTNEY. Again, I just want to follow up on the last round of questioning, which is the WIA Act, which I give Chairman Kline all the credit in the world for moving a bill, a law that had not been changed since the Clinton Administration and modernizing the structure and the focus has been, in total, hitting all cylinders in Connecticut.

Down the hall right now, the Secretary of the Navy is talking about the fact that in the last seven years, the Navy has put in under contract 84 ships and submarines. The prior eight years, the prior administration, it was only 41, so you can imagine what that means in terms of the industrial base, whether it is Connecticut or Virginia or California, is that we have really had to move fast in terms of metal trades, engineering, and design. In January, Electric Boat announced 1,500 hires this year to again accommodate that demand signal from the Navy and it has been all hands on deck, which the WIA and the workforce board is today producing results, which would not have been the case without passage of that law and without by the way the omnibus which has given the Workforce Innovation Funds that are now combining community colleges, tech schools, and the employer who are now working together to fill this huge workforce need.

I mean, if you go online today, there is probably about 300 or 400 job openings right now as we are sitting here in this room. That is just for the shipyard; if you go there are 470 suppliers in Connecticut and there are thousands across the country. They were in town just a couple of weeks ago, the submarine industrial base coalition, so the timing of this new mechanism, as well as the resources out there for again, just take one little sector which is shipbuilding, a much neglected part of the U.S. economy. You guys are at the center of trying to solve that problem, and I am sure that is happening in other parts of the country as well as eastern Connecticut, and I do not know if you want to comment further.

Secretary PEREZ. Well, I remember my trip vividly, Congressman Courtney, to Electric Boat. I remember my trip with Congresswoman Foxx to a number of locations in her district. I remember my trip with Chairman Rogers to West Virginia, and I met a bunch

of displaced coal miners who are now working in coding at a place called Bit Source and their motto was, "From coal to code." And what all of those three visits have in common is that the workforce system is being a remarkable engine of partnership, innovation, and success. We have 5.6 million job openings right now and every conversation I have with employers is a good conversation.

I am bullish about the future. I want to grow my business and one of my biggest challenges is making sure I have the skilled workforce to compete. One of the best ways to address wage stagnation is to up-skill people and that is why I see happening across this country in red, blue, that is totally irrelevant to this conversation. It is very exciting and that is why I am so appreciative of the work that you have supported in apprenticeship because that is another way.

Apprenticeship is the other college, except without the debt, and so there is so much we can do to make sure we are building the skill superhighway so that we can help people who want to punch their ticket to the middle class and employers who want to grow their business and this is really going to be one of your legacies, Mr. Chairman, as the chair of the committee, is building that skill superhighway.

Mr. COURTNEY. Thank you. And its again, I talked about maritime and the same is true in aerospace both in the civilian and military side. We are going to have huge workforce needs out there and there really just is no other mechanism other than WIA and the Department of Labor to help employers fill those really good paying, high value positions. And I yield back.

Secretary PEREZ. I agree.

Chairman KLINE. Gentleman yields back. Dr. Roe?

Mr. ROE. Thank you, Mr. Chairman, and thank you for being here.

Secretary PEREZ. Good morning sir. Good to see you.

Mr. ROE. I am going to start by just bringing over some facts. Today, 20 percent of Latinos have greater than $10,000 in retirement and 29 percent of Americans, according to GAO, have nothing for retirement. Some studies show as much as 50 percent of people have no retirement savings.

So I think—and 75 percent of all African Americans are in the bottom quartile of retirement. And I do not believe that your rulemaking that you are doing on fiduciary and other things, I do not think your intention is to decrease financial advice of low-income investors. I do not believe that and I do not think that you believe that, but there are some facts out there that we cannot ignore now. And for many years, you have stated that your goal is promoting the Department's fiduciary rulemaking was to ensure that all retirement advisors act in the best interest of savers when giving investment advice, and dating back to our first hearing in July of 2011, I publicly agreed with that goal. Today I still agree with it. In fact, Republicans and Democrats have long agreed that we need to look at ways to strengthen protections for those saving for retirement, and that is why I am disappointed that the Department publicly opposed the bipartisan legislation *Affordable Retirement Advice and Protection Act* and its companion, the SAVERS Act.

This legislation would make the stated goal of best interest standards a reality without prohibiting advice, the so-called best interest contract exemption. DOL proposed to make it harder for working families to save and plan for retirement. We have no indication that the final rule will be any different and that is why Congress should act in a bipartisan way and let me just give you a couple of things.

Washington Post just said, I think it was yesterday in an editorial, supporting the fiduciary rule is having more plusses than minuses. I think they would definitely support my bill that the exemption is unworkable. The investment industry's strongest point, that its proposed exemption and the administration offered to placate opponents is so vague and unworkable that few, if any, companies would take advantage of it. And a study just published from the UK, I think this week said we believe and this is in the UK that the new regulation they passed in 2013 has brought about positive step changes in the quality of advice available to those with larger amounts to invest, which is what we said all along. However, steps need to be taken and make the provision of advice and guidance to the mass market more cost-effective and, at present, this high standard of advice is primarily accessible and affordable only to the more affluent in society. Would you now reconsider, with this new information, your opposition to our commonsense legislation?

Secretary PEREZ. Congressman, let me say a few things. Number one, in our Ozzie and Harriet universe, this issue was irrelevant because people work 30 years, they had a defined benefit plan, and at the end of that 30 years, they had a pen, a party, and a pension.

Today, in a world of the $11 or $12 trillion of IRAs and 401(k)s, people are responsible for their own decisions. And as Jack Bogle, as I noted before, said when you put your customers' interests first, it is good for your customers and it is good for business.

You said something that I wanted to correct, which is that you indicated that there is no indication that the final rule will be different. When we withdrew our first rule, we undertook a series of meetings and listening sessions. Our first rule, for instance, had a provision pertaining to ESOPS. We heard a lot about that. We heard a lot of concerns and as a result of that, our NPRM took that out. I have said repeatedly and publicly our North Star is an enforceable best interest standard—

Mr. ROE. Specifically, the best interest contract exemption. I appreciate that change in the rule, but what about the best interest contract exemption, which seems to be unworkable?

Secretary PEREZ. Well, again, our North Star is an enforceable best interest rule, best interest standard. We heard from a number of people who said there is a more linear path to that. Our response: show us the path, and that is why we got 300,000 I think comments. We read every single one of them and I look forward, at the conclusion of our process, to briefing you and explaining to you here was the proposed rule, here were the comments we got, here are the changes we made. And when we reach the end of the process, I commit to you that we will do that with you and with anyone else who has an interest.

Mr. ROE. I am glad to hear. The independent investment firm Morning Star originally estimated that your proposal would cost 2.4 billion every year in compliance cost which will be passed on to me, the retirement saver.

Moreover, the Morningstar Report also said that the wealth management firms would no longer serve low-income savers currently holding up to 600 billion low-balance IRAs. The big chunk of that business will go to robo-advisors, which I think is a bad idea.

But before my time is expired, I did want to say one thing. And this is off the fiduciary rule, but the most productive—I was in Beijing, China, 2 years ago with the committee; 1.4 billion people live in China and 1.4 billion people do not produce as many goods and services as the American worker does with 300 million people. The most productive worker in the world is the American worker and we need to be telling our worker that more because they feel very beat down. With that, I yield back.

Chairman KLINE. Gentleman yields back. Mr. Sablan?

Mr. SABLAN. Thank you very much, Mr. Chairman, and . . .

Secretary PEREZ. Good morning, good to see you again.

Mr. SABLAN. Thank you for being here, Mr. Secretary Perez. The Northern Marianas Mariana Islands as you know, my district faces a different problem than much of America. We actually have too many jobs and not enough workers and it is not as if people can get in their car and drive across the State line or county line and be there to occupy these jobs. Well, not enough U.S. workers, so we have to bring in about 10,000 workers from Asia to support our economy.

Two years ago, Mr. Secretary, you extended a program that allowed those foreign workers into the Northern Marianas and I think that was the right decision. Personally, I would prefer we did not need these workers, that we had enough, but I thank you for doing so because I also know that you probably had the same personal preference as I do, but you based your decision on a study by economists and others in your department. And you concluded that there were not enough U.S. workers to serve the economy in 2014 and would not be for at least another five years.

I have three questions actually. First, can you tell us what your department is doing now to help develop more U.S. workers in the Marianas, either through training people already there or by making the job opportunity known to U.S. workers, elsewhere in America?

Secretary PEREZ. Sure, over the last four fiscal years, the CNMI has received roughly $6 million in grants from the Department and those grants are designed to do for the workforce system there what we are doing elsewhere across the United States. We look forward to working more—There are number of competitive grant opportunities, and I am more than willing to have our ETA staff talk to you about competitive grant opportunities. We have a cadre of career staff that reviews those requests or submissions and we also visited the CNMI in 2015 or 2016 to provide technical assistance, so we want to make sure that we do everything in our power to help.

Mr. SABLAN. We appreciate it and we need all the help you can give us, Mr. Secretary. My second question is, in extending the for-

eign worker program, you requested the commonwealth government update your department every year about its "efforts to locate, educate, train or otherwise prepare U.S. citizens to work in the Marianas." This update were so your department could be prepared to decide about extending the foreign work program beyond 2019. The law no longer allows you to extend the program. I understand that, but are you still expecting to get the updates, Mr. Secretary?

Secretary PEREZ. Well we certainly, Our North Star here is U.S. workers. Anything we can do to help U.S. workers is what we try to do. We recognize that there were not enough so that is why we granted the transition until 2019, and those reports are very critical in enabling us to make that judgment about the North Star that I referred to. How are things going with the development—

Mr. SABLAN. Are you expecting to get the updates now that the 2019 date is no longer flexible?

Secretary PEREZ. Yes, we are expecting to get the updates.

Mr. SABLAN. Okay, thank you, thank you very much, sir. And so here is my final question, Mr. Secretary. I know the government has been working on a study of what our labor needs will be going forward. They are looking at development plans proposed to demographics, the skills that we currently have, and I suppose that we can use this information to update you, but it is also for their own planning purposes and it must be very similar to the analysis that your department did prior to advising you to extend the foreign worker program. And so my question is whether you would be willing to share with the Marianas commonwealth government the technical expertise you have in your department to do this work, that so we do not have to reinvent the wheel, as they say? Maybe a yes—

Secretary PEREZ. We would look forward to working with you in any way that we can to help build a strong economy in the islands.

Mr. SABLAN. I appreciate that and whatever you could do to help us would be very—the labor needs and training efforts will certainly be helpful to us here in Congress even in assessing whether to extend the foreign worker program, the CW as we call it, which is something I think we would have to look at probably in the next Congress. Mr. Secretary, thank you very much for your service to our country, and, Mr. Chairman, I yield back my time.

Chairman KLINE. Thank you, gentleman. Mr. Walberg?

Mr. WALBERG. Thank you, Mr. Chairman, and welcome, Mr. Secretary.

Secretary PEREZ. Morning, morning Mr. Chairman. Good to see you again.

Mr. WALBERG. You are a long way off down there—

Secretary PEREZ. It does look a few time zones away I must admit.

Mr. WALBERG. Especially looking through Mr. Byrne's head here.

Secretary PEREZ. Well, he has hair so unlike me, so it might make it a little harder.

Mr. WALBERG. I am jealous. Mr. Secretary, there are many small retail and restaurant businesses who employ younger managers, who currently earn salaries that are less than 50,000 per year. I am not concerned that we would increase the overtime. It was

probably needed, the wage, but 50,000 causes me concern because as I look at some of the reports, over 50 percent of retail managers are female and many are working mothers who appreciate the flexibility and other things that come with salaried status, the resume builder, the experience opportunities as well as using their skills allowing these managers highly valued quality time with their children.

The pending overtime regulation would require that many of these managers be converted to hourly non-exempt status which effectively eliminates much of the flexibility working women and, may I add, men value. Is this outcome the outcome that the President and your department desire in regard to the flexibility in particular as it would impact managers who are currently exempt and accustomed to having greater flexibility than their non-exempt counterparts?

Secretary PEREZ. Sure, because of the status of the reg, there are limits to what I can say, but what I can say is this, nothing requires hourly status. You can be salaried and get overtime, there are a number of ways to do it and the process that we undertook was to make sure that we sat down and listened to—and before we even did the formal notice and comment, I personally participated in a number of meetings with retailers, large, small, in between, and I asked them among other things, what did you do back in 2004 when the Bush Administration changed the rules so that we could learn from that and that was very instructive. I met a person who works 70 hours a week and I remember somebody asked when was the last time you had a vacation and they said vacation? Vacation, vacation is when I work only 40 hours a week. And what we learned is there are a lot of folks who are working 20, 30 hours and, frankly, those hours are effectively not compensated because of some of the situations.

Mr. WALBERG. But certainly you also heard testimonies I have heard all across my district of people who understand that. That is part of being salaried. There are also some that we have had in front of us who were assistant managers who during times worked less than 8 hours a day based upon the flexibility they had and sometimes 80 hours a week they would work, yes, but the options that they had were very important to them. And like I said, if we had gone from 23,000 to say if we kept the same formula that was used to bring it to 23,000, we probably would have been at 36,000. I think that might have been more justifiable, but to move it up to 50-plus is a real challenge to the small businesses, but more importantly I think to these growing managers that want this opportunity and flexibility that gives because sometimes that flexibility is far more important than even the salary level.

Secretary PEREZ. Well, one thing that I again would commit to you is when the final rule is published, we will have our team come to you and anyone else to explain what it means, to explain what the options are, to explain the flexibilities that exist—

Mr. WALBERG. I look forward to that, but I also do not look forward to the potential fallout if it goes the way that we have heard.

Silica, let's move on here, Mr. Secretary, quoting from your testimony, "New silica permissible exposure limit, PEL, is expected to be issued shortly." In context with the fact that silicosis is down

significantly with present standards except for a few unique, and I mean unique, hotspots in underground mining, in context with the present PEL, are you confident the PEL and the engineering controls mandated by the regulation will meet OSHA's legal requirement to promulgate a rule that is technologically and economically feasible? And again, in context with the fact as I understand it from the last testimony, we do not have measuring devices yet that can measure the new standard. Has that changed?

Secretary PEREZ. Well, again, this has been a 20-year process of outreach, talking to NIOSH, understanding the science. And when we did the proposed rulemaking, we had I think over a week of hearings, and we heard from folks in the industry, we heard from scientists, we heard from all the stakeholders about what we need to do, and we heard from folks, like Alan White, who are living with silicosis. We heard from folks like Mr. Ward from Michigan, whom I met recently, whose father died at the age of 39 from silicosis. So we have built, as always, a very inclusive process and I am very proud of that.

And one of the things we heard with frequency was you need to make sure that standards are flexible so that they can be achievable. We had this conversation in coal dust and we heard a lot of the same issues – 99 percent of the time—

Chairman KLINE. Sorry, the gentleman's time—both gentlemen's times has expired. Ms. Clark?

Ms. CLARK. Thank you, Mr. Chairman, and thank you for joining us, Secretary Perez. Last March, the Assistant Secretary of Labor for Occupational Safety and Health, Dr. David Michaels, wrote about a woman from Massachusetts named Guadalupe Gonzalez. She was injured on the job. After three surgeries, unable to return to her former work, and today she earns 60 percent of the former salary that she had, and she is only one of the estimated 3 million Americans who will suffer both physically and economically due to on-the-job injuries. And last June, OSHA released a report examining the plight of injured workers and detailing how changes in State-based workers compensation insurance programs have made it increasingly difficult for injured workers to receive full compensation with employers providing only 20 percent of the overall financial cost of workplace injuries.

When employers are no longer responsible for covering the full cost of these workplace injuries, what effect are you seeing overall on workers' safety?

Secretary PEREZ. Well, one of the basic rights that we have in any workplace is the right to be safe and sound and what we have seen and, frankly, an alarming trend data across the country and the example you cite I wish were an outlier, but it is not. Is that one of the emerging pathways to poverty in America is a workplace injury and I have spent a lot of time on this issue and I appreciate the letter than you and others sent to us I think last—in 2015 about this issue. And there is, frankly, a troubling trend in States across the country to either privatize workers comp or dramatically reduce the benefits and that is not fair. It is part of the safety net if, God forbid, you get hurt on the job, that should not put you into poverty. And by the way, one of the impacts that we see is that then there are increased applications in Social Security disability

insurance so the Federal Government is indeed having to bear the burden for these State efforts, and so that is why we have been assessing steps that we can take moving forward, understanding that a lot of these laws are really at a State level. ButBut I look forward to continuing this conversation because it is a sleeper issue that needs to be given light because it is unfair that people walk to work, go into work in the morning and then begin that pathway to poverty that day when they have that injury.

Ms. CLARK. Thank you, we look forward to continuing working with you on that, and I also want to thank you for your leadership around the issue of paid leave and, in particular, the Paid Leave Analysis Grant Initiative that you undertook and the paid leave partnership initiative proposal that is in the 2017 budget. We remain one of the few industrialized nations that does not provide robust paid leave for our workers with only 12 percent of private sector workers get parental and family leave from their employers and only 4 in 10 have access to paid medical leave at work. I know that I hear when I go home that there is a cost to not providing paid leave. What are you hearing from the business community when they are making the case for paid leave?

Secretary PEREZ. Well, the cost of doing nothing is indeed significant and you correctly point out that we are the only industrialized nation on the planet without a universal Federal paid leave law and, regrettably, we are the only industrialized nation on the planet where this issue has become partisan. It is not partisan anywhere else in the world and that is unfortunate. And I am thinking about the employer I met in Vermont, he provides paid leave, I did a round table with the Chamber of Commerce when I was up there talking about paid leave.

He provides paid leave because he understands that it is a retention tool, it is the right thing to do and the smart thing to do. He has a lot of dual career couples and when someone is sick and the other couple's employer does not have leave, guess who takes the day off. His employees. That is not fair to him. We need a level playing field and we should not have a race to the bottom. And for those who say our labor force participation rate is going down, we need to take steps to go up. The most important piece of public policy that we could undertake to increase labor force participation is a Federal Paid Leave Law that would enable us to be at the same level of female labor force participation as Canada. We were equal to them in 2000. We are eight points behind them now. If we had kept pace, we would have 5–1/2 million more women in the workplace.

Ms. CLARK. Thank you. I yield back.

Chairman KLINE. Gentlelady yields back. Mr. Salmon?

Mr. SALMON. Thank you. Secretary Perez, welcome, thank you for—

Secretary PEREZ. Thank you for your distinguished service as well, by the way.

Mr. SALMON. Extinguished is more probably where we are at right now, but I wanted to address a couple of things. First, I think it is pretty widely accepted that one of the most respected small business advocates in the country is the NFIB, and small business really is the backbone I think of America's economy right now.

They have expressed some strong reservations about the overtime rule and said that it could adversely affect as much as 40 percent of small businesses. Are you factoring in their concerns into the final decision on this rule?

Secretary PEREZ. Absolutely is the short answer, and before we did our formal rulemaking process, we did informal rulemaking process, we did outreach because I want to listen and learn, and we built a big table. We talked to businesses large, small, and in between about their experiences. We asked them about what happened in 2004 when the Bush Administration put in place a new rule. How did you adjust? What do you think? And so we have gotten a lot of feedback both during the informal outreach process and during the formal notice and comment process from small business and we appreciate that input.

Mr. SALMON. I appreciate that. I know that one of their contentions is that the law of unintended consequences could end up forcing some of those small businesses to not hire salaried employees or not hire those positions and one of the unintended consequences could be a loss of jobs, so I just hope that is all taken into consideration.

The second thing I wanted to talk about and I know it has already been addressed but in my time in Congress, and I am going on 10 years, I have never had a proposed rule that has sparked constituent outcry and ringing of the phones and sending of emails more than the proposed rule on the fiduciary rule and it is a bipartisan response.

I am very, very concerned, folks, that our lower income investors and lower income portfolios, and I just want to make sure that the law of unintended consequences does not take place and it makes it so that the cost of doing business for them when hiring a financial planner is exorbitant and puts it out of reach for the common people.

I understand that when people have multimillion-dollar portfolios, that they can afford that kind of a thing and the cost associated with this rule, but I have heard from folks on both sides of the aisle in a big, big way and I just wanted to share that with you, and I hope that is something that you take into consideration because the last thing that any of us would want to see is limited access for lower income middle class people that really want to participate in investing through 401(k)s and IRAs and those kinds of things.

Secretary PEREZ. Well, I think we have a shared interest in making sure that everybody has access to retirement advice and I have made the offer many times to folks and I will make it again. At the end of our process, we look forward to explaining what we did, the changes that we made, and how we intend to proceed. And I also look forward to anyone who is interested to listen to folks who right now are fiduciaries, they are doing this.

They have a big book of small businesses and small savers and what they tell me repeatedly is to all those businesses who say they are no longer going to serve small investors, give them my email, give them my phone number because we have figured out how to do well and do good. And so I think it would be very helpful for folks to learn the lessons that they have learned because their

businesses are going gangbusters and so I look forward to the continuing dialogue with you, Congressman.

Mr. SALMON. Thank you, Secretary Perez, and I am going to do the unexpected and not wait for you to gavel me and I yield back the balance of my time.

Chairman KLINE. I thank the gentleman. Mr. Takano?

Mr. TAKANO. Thank you, Mr. Chairman. Mr. Secretary, it is indeed a pleasure to hear from you this morning about your department's priorities. I agree that this administration has done a lot to be proud of and I am hopeful we can maintain the momentum in the years to come. I was pleased to learn that DOL was moving forward with the rule to update the income threshold for overtime protections for salaried workers and that the rule was sent to OMB just this week.

In fact, many of my colleagues here today have joined me in sending a letter urging OMB to act promptly to review the rule and finalize it so we can begin helping millions of workers as soon as possible.

As you know, Americans are working longer hours and are more productive, yet their wages are largely flat. It is crucial that they get a fair day's pay for a hard day's work. In 1975, 62 percent of salaried were eligible for overtime, now only eight percent of workers are eligible. Change is long overdue. Can you walk us through some of the repercussions of this new rule? In addition to raising wages for those workers who are newly eligible for overtime, won't it help to redistribute hours to those who are underemployed?

Secretary PEREZ. Well, again, I cannot get too specific on the details because we are in the rulemaking process, but the President directed us to modernize the overtime rule because, as I said before, overtime stands for the proposition that if you work extra, you should be paid extra. And as a result of the things that you correctly pointed out, we would talk to people time and time again who were working 60, 70 hours a week making $25-, $30,000 a year. So we ended up again doing a period of informal outreach that lasted roughly a year followed by the formal notice and comment process, got about 300,000 comments, and have been carefully reviewing those and, again, there is a big discussion about stagnant wages in this country. And when I was growing up in Buffalo, New York, if my parents, friends of mine if their parents were a manager, that meant they were in the middle class and there are a lot of folks who are managers doing important work who are, frankly, making the minimum wage and I do not think that is fair.

Mr. TAKANO. Well, in a nutshell this rule is about fair wages, but also work-life balance. Mr. Secretary, there has been a lot of discussion about the proposed rule's impact on job creation. The Department has updated the salary level seven times since the *Fair Labor Standards Act* became law in 1938. Can you talk generally about how industry has complied with these adjustments? Is there a history of significant job loss? Won't the rule also have a positive impact on the economy through increased consumer demand?

Secretary PEREZ. Well, what was interesting is there was a report by the National Retail Federation in connection with this proposal on overtime and one of the things they noted was it may ac-

tually increase the number of jobs and there is actually a simple reason for that. If you are working 60 hours a week and you are effectively working 20 of those 60 for free, and the overtime rule forces you to pay people now for those extra hours they are working, the response of some employers may be to hire more workers. And that is the National Retail Federation, that was not a study from the Department of Labor. So, again, as we move forward here, we are taking care to listen to every single perspective and to understand what happened the eight previous times and we talked to a lot of people who were involved and around after 2004 to say, well, what was—how did you adjust to this, how did you adjust to that? Because we do care about the doctrine of unintended consequences as well as the direct consequences.

Mr. TAKANO. Great. Well, for the first time, the President's budget is requesting $50 million, the authorized amount for the Department's Homeless Veterans Reintegration Program, or HVRP. Can you talk about the Department's efforts to help eliminate veterans' homelessness and how you hope to use the request of the additional 12 million for the HVRP program?

Secretary PEREZ. Well, first of all, I want to thank you for you unwavering leadership in this area and to thank everyone. This has been a bipartisan issue. I have had the privilege of serving as the chair of the inner inter-agency task force to eliminate homelessness and our focus on veterans' employment, on eliminating veterans' homelessness has yielded remarkable dividends and one of the ways we are doing it is by making sure we can get people a job and the $50 million that you are referring to is going to enable us to serve over 22,000 veterans through the HVRP program. And the HVRP program has been studied, it has been shown to be incredibly successful and we want to take it to scale and we want to make sure that every single veteran who did so much for us, we got their back when they get home.

Mr. TAKANO. Thank you, Mr. Secretary, on point here.

Chairman KLINE. Gentleman's time has expired. I need to let my colleagues know that I am having to reduce the time to 4 minutes. The Secretary has a hard stop time at 12:00, so please, try to stay within your time limits. And I think, Mr. Guthrie, you were the victim of this yesterday so my apologies but you are recognized.

Mr. GUTHRIE. Always four minutes. Thank you Mr. Secretary. Thanks for the comments that you have made earlier about us working together on the fiduciary rule when ESOPS were involved, and I appreciate that because it has been a good professional working relationship, and I will even say that it created a friendship as well, so I appreciate that very much. And before I get to my questions, I know the issues that are really affecting this group of people are not necessarily in your department, but I had United Mine Workers in this morning and you mentioned the Ozzie and Harriet world and they were describing the world that they were in. These guys were older, about 10,000 in Kentucky, a lot of them over 75. They did retire from the mines and they wanted to talk to me this morning and we thought cradle to grave healthcare that they were promised and what is going on with administration, what is going with the economy, but the administration as well, and not necessarily in your department. But I told them I was meeting with

you for a few minutes and just wanted to bring up our United Mine Workers and what has happened to the coal industry because without the existing industries paying into their pension fund, it is—as they are going out of business, it has been difficult for them.

But on ESOPS, I know when we met, we talked about unintended consequences and had a great discussion and how ESOPS, I know the ones in my district that you met with, and just all over the country create wealth for people that work in those businesses, but we are concerned that people's retirement security is all in one basket. I mean that is a concern as we move forward, so we want to make sure that is not compromised that ESOPS are moving forward and doing things correctly and the oversight is important.

What I have reported back and not the ESOP that you met with but others, just not necessarily in my district is when the Department of Labor has gone into the ESOPS and not just rare occurrences but more common, that they issued subpoenas before they even notify that there has been an investigation going on and I am one even here to members of Congress. I have talked to chairmen before about subpoena power of the Federal Government that we have to be careful with it. When somebody receives a subpoena, it is serious ramifications, can we get information prior to that step, and so I guess what I asking is if that is occurring and it has been brought to my attention and I have not seen it directly, would you be willing to review the process because I think it would be best if and I know that is how you run the Department because I was kind of surprised because of the way that we worked together if they need information, if ESOP is willing to provide it, that happens first. And I am the first one to say if your department or if the Congress is not getting the information that they asked for, then the subpoena power is there and that it should be used, but to begin with that step I think should be reviewed and would you be willing to review that and any comments on that going forward as we are here together? I know this is something you need to look at, but if you have any comments now?

Secretary PEREZ. Well, I am happy to look into this. I must confess, I am not familiar with the specific concern as it is related to subpoenas in the ESOP context and I am more than willing to get back to you. And what I would love to do is folks who have come in just like we did before, there is no substitute for getting around the table and listening and seeing what the concerns are and then coming up with a pathway forward, so I would be more than willing to kind of replicate the model we used before and do it again because you helped me get smarter and I would like to do that again.

Mr. GUTHRIE. Well, my view, too, is that there needs to be oversight, but if we can do it mutually working together as opposed to the adversarial, but if it gets to that point, then you obviously have the right and the power to do so.

Secretary PEREZ. We will reach out to you. My team will reach out to your staff after today.

Mr. GUTHRIE. Absolutely, thank you very much. I yield back, Mr. Chairman.

Chairman KLINE. I thank the gentleman. Mr. DeSaulnier recognized.

Mr. DESAULNIER. Mr. Secretary, first, thank you for your passion and sincerity to the work that you are involved in and also thank you for your relationship with employers. As a former small business owner, who, my success in the restaurant business was directly related to my employees and how they interacted with my clients. I appreciate the fact that you are willing to accept that most employers I think want to do the right thing and value their relationship with their employees, so I wanted to ask you a question about a lot of the changes in a relationship between employers and employees, particularly with large companies, and that goes to the issue of contracting out or a new word that I have learned recently, the fissuring of our relationship. So it is been estimated that there are 30 million such workers in five industries: in the construction industry, the hospitality industry, the janitorial, personal care, and home healthcare. So clearly this relationship is different.

I know when I was in legislature in California, there were calls both by the Chamber of Commerce and obviously the Labor Federation, is how do we more clearly delineate who is a contract employee and who is not. A predecessor of yours recently did an oped piece where he suggested—who is now a teacher at the University of California Berkley, Secretary Rice, said that if you are compensated, 80 percent of your compensation comes from one source, that should be the definition. And that you can do that administratively right now, so could you talk a little bit about the change, maybe some of the benefits of these relationships if you see them, but also the challenges to make sure that the relationship between a contract employee and their actual employer is accurate and what that does to the economy potentially as well.

Secretary PEREZ. Well, you referenced the fissured workplace and, as you know, David Weil, our Wage and Hour Administrator, quite literally wrote the book on "The Fissured Workplace"

Mr. DESAULNIER. I just met with him.

Secretary PEREZ. And he told me that he had a wonderful visit with you along with my colleague, Sharon Block. And when you look at the issues that are confronting us, the fact that we have had flat wages relatively speaking and the delinking of productivity increases and real wage growth. One, there are many factors that explain that, but one of the factors has been the fissuring of the workplace. There is an appropriate role for contractors in the workplace. We employ contractors in a surgical way, other employers do, but there has undeniably been abuses of that and we have a very active docket of cases involved in what we call misclassification. And we have MOUs with 29 States because this is an issue in Utah, it is an issue in Arizona, it is an issue in Texas, it is an issue in Massachusetts, it is an issue in California, and so we have been working hard on that.

There is a test under current law and David offered some guidance on misclassification and that is an issue that is relevant to the legacy economy. It is an issue relevant to the in demand economy or the on demand economy. It is an issue relevant in every context and when people are misclassified, they are more vulnerable to injury on the job because they do not get workers comp.

They work overtime and do not get paid over time. They do not get the benefits that they are really entitled to, and that is why a big focus of our work at the Department of Labor under Administrator Weil's leadership has been addressing this and understanding that there is an appropriate use for contractors, but when there is abuse, we will act. And one of the most frequent set of stakeholders who come to us asking for help are employers like you because the vast percentage of employers are playing by the rules, but they cannot compete if the restaurant down the street is paying everyone under the table and is not paying workers comp, that is not fair.

Mr. DESAULNIER. It would be interesting to look at what the trend is over time and history. With that, thank you, Mr. Secretary, thank you, Mr. Chairman. I yield back.

Chairman KLINE. The gentleman's time has expired. Mr. Thompson?

Mr. THOMPSON. Chairman, thank you, Mr. Secretary, thank you.

Secretary PEREZ. Pleasure to be here.

Mr. THOMPSON. It is good to have you here. I want to zero in on just a follow-up of a piece of legislation that we successfully have obviously passed, WIOA, and kind of dovetail that a little bit with what I hope will happen with Perkins as well. I spent a lot of energy and time and just with the partners that are after with WIOA. I spent a lot of time with folks who are professionals, individuals across the board, our educators, our prevocational sites for individuals living with disabilities, certainly vocational training sites. And so as co-chair of the Career and Technical Education Caucus here in the House, I certainly want to thank you for highlighting the importance of skill and workforce training and I agree with your sentiment that the passage of WIOA is a tremendous step in the right direction.

As the Department moves through the process of implementing the final WIOA regulations, I asked you to consider the future importance of aligning WIOA regs with an updated Perkins Act which we hope to consider in the coming months in this committee. What are your plans to align both of these workforce development and education bills?

And then just a follow-up, how will you ensure that individuals with disabilities are given equal opportunity for success and growth under both of these acts?

Secretary PEREZ. Music to my ears to hear those questions. Thank you for your leadership. I can tell you served on a WIB because you know this at the local level. One of the major benefits of WIOA has been the stove pipe implosion at a State and local level and the stove pipe implosion at the Federal level. The final regs are a joint venture between DOL and the Department of Education. We are working more closely than ever and when you mention Perkins, my ears perked up because I am a huge believer that we have undervalued career and technical education as a Nation to our detriment and the synergies of WIOA and Perkins reauthorization I think create a remarkable opportunity to address the challenges that you are outlining. We need to build—we need to fortify the apprenticeship on ramp and the skills superhighway and Perkins is a way to do that.

We also, to get to your question about people with disabilities, WIOA had a provision creating an advisory committee on the employment of people with disabilities. I have attended at least one of those meetings and we will be receiving their final report. One of the things I am most proud of in the work I have done in my Federal career and in State government is working with employers and others on the employment of people with disabilities. We all too frequently ignore the first—we focus too much on the first three letters of that word and not enough on the last seven, and we have done a lot of work with employers in Maryland and elsewhere who—for people with disabilities, sometimes transportation is a huge issue. There are so many jobs out there that you can do from home, telecommuting, and so we have done a lot of work in that area. The advisory committee is going to have a series of recommendations about how we empower people with disabilities because, as you know, the labor force participation rate is too low. There are very few people that come to me and say, Tom, I want to be a taxpayer. People with disabilities are those folks.

Mr. THOMPSON. In the few seconds I have left, you know how are we watching carefully? I mean there are a lot of folks who are in prevocational programs who are—that is very appropriate. Multiple disabilities, not really despite—and I came out of rehabilitation so I work to try to facilitate adaptation, but for some folks—and they get so much satisfaction out of that work and I am concerned that we just make sure we do not eliminate those opportunities for folks who are not ready for competitive employment.

Secretary PEREZ. I totally appreciate that view and we have heard it from a lot of people.

Chairman KLINE. The gentleman's time has expired. Ms. Bonamici?

Secretary PEREZ. Thank you so much.

Chairman KLINE. The gentleman's time has expired. Ms. Bonamici. Thank you, Mr. Chairman.

Secretary PEREZ. Good to see you.

Ms. BONAMICI. Mr. Secretary, welcome back to the Committee.

Secretary PEREZ. It is a pleasure.

Ms. BONAMICI. Thank you for your leadership. I know you are aware of the steps that have been taken in my home State of Oregon for working families, paid sick days, improving the retirement system, raising the State minimum wage, and I am glad to see that your budget includes many priorities that will help working families in Oregon and across the country.

I want to first follow up on Representative Clark's question about paid family leave and appreciate your response to her. It is time, past time, that our country joined the rest of the world in offering family leave. It is my understanding that now approximately 25 percent of women in this country return to work after two weeks of giving birth because they have no paid leave. So will you address the issue? And I also want to mention even places like the country of Estonia has up to a year and a half of family leave. We have none unless it is offered by private employers. So will you talk a little bit about the benefit to business?

We know that it benefits families and benefits children to get that strong start in life, but what about the benefits to businesses

that are providing paid leave, whether it be through recruitment and retention? How are these businesses seen?

Secretary PEREZ. It has been an enormous retention strategy. Business is—I mean, I want to hire the best and the brightest and so my paid leave policy is giving me a competitive edge. When I travel internationally I ask the question of everyone. We organize meetings through the chambers in various countries. We have been to Australia, England, Germany, Switzerland, Canada, and I ask the following question: if you were king or queen for a day, would you diminish or repeal your paid leave laws? I usually get a one- or a two-word answer. The one-word answer is no and the two-word answer, for benefit of this committee, is heck no.

Ms. BONAMICI. Probably hard to find a country that does not have it.

Secretary PEREZ. And the reason is because it is part of their competitive advantage and Canada, what they do when someone is off on leave is they hire a contractor and they kick the tires on that employee so that they can see whether that is someone that they may want to hire instead of using the resume, which is a far more imperfect tool to grow your workforce. So this is the only nation where it is also a partisan issue.

I mean Australia is governed by a conservative ruling party who won their election on a platform of expanding paid leave.

Ms. BONAMICI. Thank you, Mr. Secretary. I also wanted to ask you about adjunct faculty at higher education institutions. They typically face low pay, no benefits if any, they lack job security, get inadequate institutional support, and in only a few States can receive unemployment compensation, even though they have no assurance of full-time employment. So what is the Department of Labor doing to address this issue and improve the working conditions for adjunct faculty?

Secretary PEREZ. Sure, we have heard about this issue a lot, and I appreciate your continuing interest in this and we have spoken to a lot of stakeholders. Our guidance, as you know, on eligibility for unemployment benefits is 30 years old and a lot has changed in the last 30 years. So, what we have been doing is a series of listening sessions to figure out what should the 21st century guidance look like, and we have spoken to folks in higher ed, we have spoken to folks across the spectrum, and, again, we have heard from a lot of people like yourself, and we are committed to reaching a workable solution in the coming months on this issue.

Ms. BONAMICI. Any preview of what direction that going to—

Secretary PEREZ. Well, we are still listening, so I would hate to prejudge it because we have heard from a lot of people and there still are more people that we need to hear from, and I pride myself in making sure I listen to everyone before we figure out exactly where to go.

Ms. BONAMICI. Very much appreciate that and look forward to working with you. I yield back.

Chairman KLINE. The gentlelady yields back. Mr. Allen?

Mr. ALLEN. Thank you, Mr. Chairman, and thank you, Mr. Secretary.

Secretary PEREZ. Good morning, sir.

Mr. ALLEN. How are you doing today?

Secretary PEREZ. I am well, thank you.

Mr. ALLEN. Good, good. You know as a businessman for over 35 years, in fact, just two years ago I was out in the business world, and what I found in economic development the number one factor that a company looks at when they look at your area is the development of a skilled workforce. We have got 46 million people I think at last count who are on some type of government assistance, that are, I guess, either underemployed or unemployed.

We have in our education system a number of students who drop out of high school and do not enter the workforce. What is your plan to deal with that? And you have, like you said, 10 months left, what would you do to change the current circumstances that we are faced with in trying to get folks in the workforce?

Secretary PEREZ. Sure, let me give you a couple of examples of things that we are doing. One of the reasons I am such a big fan of apprenticeship is because apprenticeship provides remarkable opportunities to bring people who have been out of the workforce into the workforce. Not only in any job, but a job with a career ladder. So, for instance, South Carolina has a tax credit for employers who hire apprentices and they have been taking folks who are on TANF and CVS, who has been a strong partner of ours on this. They are taking folks on TANF, they are putting them into a pharmacy tech apprenticeship program, and they are on a career pathway to a middle class job. And so those are examples of things that we are doing using the tools in the *Workforce Investment Act* and now with WIOA, we have more tools to do that because I firmly believe and it is a fundamental tenet of workforce development that every person is gifted and talented and there is no such thing as a spare American, and that is why we have done so much work connecting folks, breaking down stove pipes so we work closer with the TANF folks than ever before. We are working closer with the Department of Education, as Congressman Thompson was talking about, to lift up career and technical education for folks. So I am very excited about the work that is being done in that area and if you have other ideas about how we can do that.

Mr. ALLEN. Are we making enough progress though? I mean it just seems like we are on hold or something. They are great programs, but how—

Secretary PEREZ. I mean I look at the unemployment rate of—it was 10 percent in 2010, it is 4.9 percent now, and you look at—

Mr. ALLEN. Participation is the key, I mean—

Secretary PEREZ. I'm sorry?

Mr. ALLEN. We have people who are not participating in the workforce.

Secretary PEREZ. Well, actually the labor force participation rate last month was at its highest level in over a year and that is because people have more confidence now that they can get a job.

Having said that, I want to continue to work with you and others because we have had tremendous success linking people who have been on various forms of public assistance to career pathways, that is for me a labor of love and there is nothing better than talking to employers like Andra Rush at Detroit Manufacturing Systems, who went from 0 employees to 1,200 employees. She manufactures the consoles for the Ford F–150 and she used the workforce system.

She made use of folks who had been out of work for two, three years and she was able to take it to scale with Match.com helping her out.

Mr. ALLEN. I am just about out of time but the number one impediment to creating jobs, at least in the small business community, is this overreach in the regulatory environment and, I mean, I am sure you are aware of that. I mean in other words, from the business standpoint, it is very difficult to make business decisions when you really do not know what the next rule is going to be. And I have to yield back my time, thank you.

Chairman KLINE. Gentleman yields back. Ms. Wilson?

Ms. WILSON. Thank you, Mr. Chair.

Secretary PEREZ. Good morning.

Ms. WILSON. Good morning, Secretary Perez, I thank you for being here today.

Secretary PEREZ. Pleasure to be here.

Ms. WILSON. And providing testimony on the President's budget request for the Department of Labor. I commend the President for putting forth a budget that promotes fair wages, safe workplaces, and equal employment opportunities. I hope our committee will join DOL in its efforts by passing legislation that supports working families in these last 10 months, work with the Department rather than against it.

There are so many great things that the Department is doing, but I would just like to touch upon a few. First, I am glad that the administration rejected the Bush era proposal that would have slashed FECA benefits for injured Federal workers who have dependents or who have reached retirement age. As you know, in December 2015, I joined Ranking Member Scott, Congressman Cummings, and Congressman Connolly in sending a letter to the Office of Management and Budget on this issue. I commend the administrator's decision to ensure the workers who have committed themselves to Federal services are honored by a system that does not leave them and their families financially worse off than in injury or death.

As you know, I have introduced the *Payroll Fraud Prevention Act* to combat employee misclassification. In your written testimony, you shared a compelling story of how a CEO shifted his thinking on the issue of misclassification for the betterment of his workers and his company. Can you please share that story with us and can you speak to how this year's budget will continue to support efforts to combat employee misclassification?

Secretary PEREZ. Thank you for your leadership on that issue and thank you for your question. The issue of worker misclassification has been a chronic problem. When I was in Maryland, we passed some laws on this and we actually did not call it misclassification because I do not like that name; it sounds like a clerical error. We called it workplace fraud because that is what it was.

When you call a worker an independent contractor when he or she is, in fact, an employee, that is fraudulent and we have seen it time and time again. And again, as I mentioned, the drywall example that you are referring to was a case that we investigated in Arizona and Utah, and you had construction workers who were em-

ployees on a Friday and then were told congratulations on Monday, you are now employee partners. It sounds good, but it is too good to be true and that is because they wanted to lower their costs and the good news is we were able to settle that case and we worked with State governments in Utah and Arizona. And I point that out because this is not a partisan issue. Misclassification is in every State in the country and it hurts workers and businesses who play by the rules alike.

Ms. WILSON. Thank you.

Secretary PEREZ. And by the way, the employer in the Arizona case, the postscript to this has been that he participated in a future of work conference that we had back in December at the Department of Labor and he has become one of our strongest supporters in this issue that you are talking about, so I really appreciate his leadership.

Ms. WILSON. Well, I just want to touch on silica before we run out of time. How is DOL planning to work with OMB to finalize this lifesaving rule that has been in the books since 1974?

Secretary PEREZ. Well, I will tell you, when you walk into work in the morning, you have a right to be coming home safe and sound and it should not be killing you. And silica, we have known about the dangers of silica for 80 years and we have been working with every stakeholder involved on this issue. And the proposed final rule is at OMB now and we hope to bring it to conclusion in the very near future.

Chairman KLINE. The gentlelady's time has expired and more bad news for my colleagues. I am reducing the time to three minutes as we are rapidly approaching the 12:00 hour. Mr. Byrne, you are recognized.

Mr. BYRNE. Thank you, Mr. Chairman.

Secretary PEREZ. Morning sir.

Mr. BYRNE. Mr. Secretary thank you for being here. I would like to talk to you today about the Office of Labor Management Standards work they are doing on a proposed persuader rule under the *Labor-Management Reporting and Disclosure Act*. Just so you know, I am a labor lawyer form South Alabama. We do not have very many big employers. Most of our businesses that employ people in South Alabama do not have HR departments. They may have somebody that is in charge of HR that has got a half a dozen things they are responsible for, so when they are in a situation where there is a union organizing campaign going on, they do not really have anybody in house that they can go to help him. They have to go get somebody like me, and there are a number of very fine lawyers down in our neck of the woods that do that.

Now, the problem is that up until now, it has been a pretty good bright line test. If the lawyers that were given that advice weren't actually communicating with employees, we were not covered by any sort of a persuader rule, but without a bright line test, that is going to put these lawyers in a very difficult position. But, more importantly, it puts those employers in a difficult position because they do not know what the law is and there is no way a small- to medium-sized business can know this area of the law because it is so fairly granulated, as you know very well.

The American Bar Association has registered its very strong concerns about attorney-client privilege issues here and as a lawyer yourself, you know how important that is. Now, here is the truth. The unions, when they go on these organizing campaigns, I am not saying they do not tell the truth, they are selective about which truths they tell. And the only way for an employee to get the entire picture is if the employer talks to him. And under the labor laws, the employer has a right to talk to their employees, but there are rules about what the employer can say and do and rules about what the employer cannot say and cannot do.

Now, if the employer cannot turn to a lawyer, that is a professional in this area and say tell me what I can say and do and also tell me what I cannot say and do, without the fear on the lawyer's part that the lawyer is going to be brought under this rule, then effectively we have denied legal counsel to the employers. And just as importantly, we have denied crucial information to the employees before they make that very important decision when they go to vote on whether or not they want a union. So I want to register that concern to you and in the 30 seconds that are left, please give me some information that would tell me that you are not going to put us in a situation where lawyers are effectively prohibited from giving that sort of advice.

Secretary PEREZ. There is nothing in the proposed rule that is currently under consideration by the way. There is nothing in the proposed rule that prohibits the employer from saying anything to their client. The LMRDA requires that consultants report their agreements that are designed to persuade employees directly or indirectly that is not my words, that is what Congress passed in 1959 about whether or not to choose to join a union. And in 1959, when Congress debated this, the attorney-client privilege was brought up as a reason not to have the word "indirectly" in there or something of that nature and Congress explicitly rejected that. So this is about transparency, this is not about affecting attorney-client relationships.

Mr. BYRNE. Secretary, I am out of time, but I would like to have a discussion with you away from here because I think you and I have a different view of that. I yield back.

Secretary PEREZ. Again when we are done with the rule we would be happy to—

Chairman KLINE. Thanks for trying to navigate the three minutes. Mrs. Davis?

Mrs. DAVIS. Thank you, Mr. Chairman, I appreciate your dedication. Mr. Secretary, I know you have had a chance to talk a lot about workforce training this morning and I wanted to just go to the transition between the WIOA and what we currently have from the perspective of the workforce centers and the fact that they are going to be moving, as I understand it, to a more competitive process and who is going to be running those centers. Since transition is going to be required by at least the beginning of 2017, is there are there plans to make certain that the workforce boards are going to be able to transition with those competitive operation process essentially, which really is probably more complicated than they faced in the past?

Secretary PEREZ. Sure, well, one of the key provisions of WIOA that Congress passed was a requirement to competitively bid the one-stop centers so that it can help increase accessibility to the centers and the services that they offer, and we certainly understand that intent and our regulations, our proposed regulations are designed to do that.

We are also excited about how local areas in States that can make use of the flexibility to accomplish this and so we have done a lot of outreach in this area. We have gotten a number of questions from folks because in some communities, the same entity has been operated in the center for some time.

Mrs. DAVIS. Right, exactly, I think that is the issue.

Secretary PEREZ. And so we are very cognizant of that fact. By the same token, we are aware and cognizant and intend to be compliant with the direction from Congress that we have competitive bidding and that is the process that we find ourselves in right now and we have spent a lot of time on this issue again, listening and learning from communities to make sure we get it right at the end.

Mrs. DAVIS. Okay, thank you. So, in fact, those boards might even need an extension and that's possible to work with them to make sure that—

Secretary PEREZ. We look forward—if you have specific questions relating to particular circumstances, I would simply—we obviously have had a long and open line of communication, so please let us know.

Mrs. DAVIS. California is well on their way here, but I know it can be an issue. And just very quickly, the Bureau of Labor Statistics is interested in collecting data which would help them understand more the issues that have been talked about here in terms of contractor employee relations, contingent workers. And I am wondering what we actually can learn. What would we like to know about capturing the information of these individuals and how might that inform our future programs for the American workforce?

Secretary PEREZ. We had a summit on the future of work, and the nature of work is changing. And one of the primary takeaways was we need to make sure we are studying with granularity how the workforce is changing, how technology affects it, and what we can do as a result to make sure that businesses succeed, workers succeed, and communities succeed.

Chairman KLINE. The gentlelady's time has expired. Mr. Bishop.

Mr. BISHOP. Thank you, Mr. Secretary, for your testimony today.

Secretary PEREZ. Good morning.

Mr. BISHOP. Good to have you here this morning. I wanted to build on the question that was raised by my colleague, Dr. Roe, earlier regarding the fiduciary rule. I know that you have received a number of comments during this open comment period. It is a proposed rule that has caused great consternation out there. I hear on a daily basis many who have raised their concerns with me on this issue. And I know that specifically you have received a significant number of comments on the treatment of the variable annuity products under the proposed fiduciary rule and that many of these comments have suggested keeping variable annuities within the prior exemption, Prohibited Transaction Exemption 84–24, that

they and other insurance and annuity products have been enjoyed since the 1970s, this is a significant change of path in this proposed rule. If this is not something the Department is considering, it is important that the final rule clarify the treatment of variable annuities under the best in contract exemption and permit the use of commissions and sales of proprietary products without imposing unnecessary and burdensome conditions.

Specifically, I would ask you to inform the committee as to what modifications to the best in contract exemption the Department is considering in order to provide a clear and workable path to make variable annuities available to clients when these products would be in the client's best interest.

Secretary PEREZ. Sure, during both the informal process before we had the formal rulemaking and during the formal notice and comment process and the hearings that we held, we received a lot of comments on the issues that you raised and I can assure that we have taken them seriously. We had a number of meetings with various stakeholders, often at the request of members of Congress, and we are in the process now of finalizing the rules, so I cannot get too detailed, but I can certainly assure you that when we reach the end of this process, we would be more than willing to explain what the proposal was, what changes were made, and why we did what we did.

Mr. BISHOP. Quick follow-up, you do recognize that the issue is one that has been raised by several individuals, several companies, several clients that are impacted by this and it is an issue that you are working on?

Secretary PEREZ. It is absolutely an issue that we have heard about and are working on.

Mr. BISHOP. Thank you.

Chairman KLINE. Gentleman yields back. Mr. Polis?

Mr. POLIS. Thank you, Mr. Chairman, welcome, Mr. Secretary—

Secretary PEREZ. Good morning. Good to see you.

Mr. POLIS. – to our Committee. Great to see you, always a pleasure. As you know, part of our bipartisan budget deal required a catch up for civil monetary penalties to keep up with inflation for OSHA penalties, for instance which have not been increased since 1990 and have actually been carved out for annual adjustment.

The *Fair Labor Standards Act* has a maximum civil monetary penalty of $1,100 for each willful and repeated violation of, for instance, the minimum wage or overtime pay provisions of the law and, of course, stolen wages can also be recouped, but the punitive aspect is limited to that $1,100, which often is completely insufficient as a deterrent. And what I wanted to ask you, to ensure that there is a real deterrent to willful or repeated wage theft or failure to pay overtime, what types of additional penalties, such as criminal penalties or increased civil penalties, could we look at to ensure that violations of our wage and hour laws are not simply a cost of doing business?

Secretary PEREZ. Sure. Two dimensions to the question. Number one, the provision as part of the bipartisan budget act directed us to issue an interim final rule by July 1st to implement the inflation adjustments, and I want to assure you that we are on track to get that done. The second dimension of your question, though, I think

goes beyond that and reflects the fact that in a lot of the work that we do defines our amount in the opinion of many businesses that I have spoken to, their cost of doing business and, as a result, they do not have the adequate deterrent. We just finished the prosecution of the aftermath of the Upper Big Branch disaster where over two dozen people died and the penalties just do not fit the crime and that is unfortunate. And that not only hurts the victims and their families, but it hurts employers who play by the rules, so I certainly look forward to working with you in that and there is bipartisan support. I have had a lot of conversations with a lot of people about that issue.

Mr. POLIS. Great. And finally, I wanted to address within the *Workforce Investment Act*, the Department of Labor's efforts to ensure that immigrants, including limited English-proficient job seekers and workers are able to acquire English and the skills they need to reach their full potential. I want to know how you are working with States to ensure that the needs of English language learners, immigrants, generally called literacy programs are being met.

Secretary PEREZ. I first started working on this issue when I was a local elected official in county government and then I led this issue when I was in State government and now I have the privilege of working on this issue here. And WIOA, has imploded stovepipes between the Department of Education and the Department of Labor, in remarkable ways that will have, among other things, the benefit of helping English language learners not only get the English language instruction, but then get access to the job opportunities. And it is a targeted population with barriers so that we can focus on them. And I very much appreciate that question because it is very near and dear to my heart.

Mr. POLIS. Great.

Chairman KLINE. The gentleman's time has expired. I think we are going to make it here with five minutes to spare, depends on the ranking member. Mr. Scott, you are recognized for any closing remarks.

Mr. SCOTT. Thank you, Mr. Chairman.

Chairman KLINE. No pressure.

Mr. SCOTT. No pressure. Mr. Secretary, yesterday I met with my local Workforce Development Board and they expressed gratitude for the outreach efforts by the Department in the WIA implementation, so I want to thank you for those efforts and making sure that WIA implementation goes the best way possible. One of the problems we have had with this hearing, Mr. Chairman, is that a lot of the issues we are discussing are in the middle of rulemaking, and so the Secretary is restrained on what he can say and we are restrained on what we know because we have not seen the proposed rules, but we do have a proposed rule on overtime that has been discussed and we heard about the option that some people want to take to work 80 hours a week. We decided decades ago that if you worked more than 40 hours a week, the principle is that you ought to get time and a half for the hours after 40, but the way inflation has worked, most of the workers who work more than 40 hours a week who are technically on salary, but would have been covered under the old regulations, yet not only do not get time

and a half, they do not get anything. So if you are paying for daycare while you are working, you have to pay for the daycare and you are getting absolutely no compensation for those extra hours. Mr. Chairman, we are looking forward to that regulation so that the same portion of workers that were getting overtime when we passed the rule to begin with still get it.

I want to thank you for your work on silica and beryllium and look forward to those regulations taking place, and for your efforts to address wage theft starting with the requirement that Federal contractors and the employees of Federal contractors get a pay stub so that they can ascertain whether or not they are getting ripped off. So, Mr. Chairman, I want to congratulate the Secretary for 72 consecutive months of job growth. That is a record by far and I think the last two years he has been setting a new record every month. We still have a long way to go, but at least clearly we are going in the right direction, so thank you, Mr. Chairman.

Chairman KLINE. I thank the gentleman. Mr. Secretary, this conversation went pretty much as I think we expected it might. You as the ranking member said you have a number of rules that are in the rulemaking process and we do not have full visibility into that, but we have concerns and those concerns were expressed by a number of my colleagues on the fiduciary rule, which I know you have heard about almost every waking hour because, if you have not, believe me, I have. The joint employer, the relationship between franchisors and franchisees, there is a lot of concern out there. There is a lot of concern and we need to see what that is going to look like.

The persuader rule that Mr. Byrne, our resident labor lawyer here, was talking about seems to me to be a clear infringement on the rights of employers, the ability for employees to get information, and concerns for those lawyers that have to be called in because as Mr. Byrne said, your small businesses, they do not have a legal team there. They probably do not have an HR department and they need that counsel, so I am concerned and I know many are concerned based on the visits to my office and the calls and emails.

And then there is some disagreement over overtime. The threshold that we have seen in the proposed rule is I think $53,000, which if you are in parts of rural America is an awful lot of money, maybe not in New York, but in a lot of places, so there are very real concerns, and we are very anxious to look into these rules. Maybe magic has occurred from our perspective and the rules have not come out to be perfectly reasonable, but they do not look like that right now, so our concerns are high. We are going to continue to look at this and work with you and your staff.

I was committed to noon; I think I am going to make it by 30 seconds. I want to thank you for your testimony and your active engagement in our questions and answers. There being no further business, the meeting stands adjourned.

Secretary PEREZ. Thank you.

[Questions submitted of the record and their responses follow:]

COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

August 12, 2016

The Honorable Thomas E. Perez
Secretary
U.S. Department of Labor
200 Constitution Avenue
Washington, D.C. 20210

Dear Secretary Perez:

Thank you for testifying at the March 16, 2016, Committee on Education and the Workforce hearing entitled "Examining the Policies and Priorities for the U.S. Department of Labor." I appreciate your participation.

Enclosed are additional questions submitted by committee members following the hearing. Please provide written responses no later than August 26, 2016, for inclusion in the official hearing record. Responses should be sent to Callie Harman of the Committee staff. She can be contacted at (202) 225-7101.

Thank you again for your contribution to the work of the Committee.

Sincerely,

John Kline

JOHN KLINE
Chairman
Committee on Education and the Workforce

Enclosure

cc: The Honorable Robert C. "Bobby" Scott, Ranking Member, Education and the Workforce Committee

Chairman Kline (MN)

Workforce Development

1. In our work to reform an outdated workforce development system, Congress was intentional in requiring contracts for the one-stop centers to be approved in an open, competitive process. The Committee has received troubling reports about local workforce development boards working to circumvent the competitive process by awarding nominal operations contracts competitively but then awarding the provision of one-stop services to state or local agencies on a noncompetitive basis. Competition helps ensure American job-seekers receive the assistance they need from high-quality providers. What steps is the Department of Labor (Department) taking to ensure an open, competitive process and that there is no conflict of interest in awarding center services?

2. Paying for results is an important way to deliver effective taxpayer-funded programs. The "pay-for-success" approach can create incentives to assist harder-to-serve populations, such as returning veterans, the long-term unemployed, or at-risk youth, and payments are only made if specific outcomes are achieved.

   While the Department has hosted webinars and PowerPoint presentations discussing the availability of pay-for-performance contracting, more can be done to raise awareness about this innovative contracting. What measures is the Department taking to provide state and local leaders the technical assistance necessary to implement pay-for-performance contracting?

3. The *Workforce Innovation and Opportunity Act* (WIOA) was designed to reduce administrative costs and unnecessary bureaucracy so state and local agencies can better focus on helping individuals get back to work. The law empowers each state to submit a single, unified state plan for the core programs authorized in WIOA. States have been in the process of developing these plans for many months despite the Department's repeated delays implementing the law.

   There are a number of concerns with the Department's decision to require states to submit plans through a cumbersome, one-size-fits-all web portal. Leaders of state workforce agencies have raised concerns about potential retaliation should they submit their plans as a single document. While drop-down tabs and word limits might reduce administrative costs in Washington, the submission of state plans in this manner requires duplicative work by state workforce agencies and transforms state plans into mere compliance documents. What assurances will the Department provide that states will not be unfairly penalized for submitting plans as written rather than in a piecemeal fashion?

Transitional Reinsurance Fee

1. Those who administer self-funded health plans are required to pay a reinsurance fee, which was created in the *Patient Protection and Affordable Care Act.* However, neither the plans nor the employees covered by the plans receive any funds from the transitional

reinsurance fee program. This is the case even though self-funded group health plans also have participants that are high risk and chronically ill, experiencing significant medical claims. As one of the primary agencies with jurisdiction over private, self-funded group health plans, the Department should be concerned about the impact of additional costs on the ability of employers to maintain these plans and the quality of health care coverage Americans receive through these plans. How much in fees have been, or are estimated to have been, collected from self-funded plans for each year in the reinsurance program (2014-2016)?

Employer Notice of Coverage

1. Under the *Patient Protection and Affordable Care Act*, employers were to provide a "Notice of Coverage Options" document to existing employees by October 1, 2013, detailing any employer-sponsored coverage options provided. Approximately one week before that deadline, the Department issued a "Frequently Asked Questions" document indicating there would be no penalties for failure to provide the document to employees by the October 2013 deadline. However, for newly hired employees, businesses are mandated to provide the Notice of Coverage Options document within two weeks of their start date. Will there be penalties for failure to distribute this document to newly hired employees? If so, when will the penalties begin?

Fiduciary Rulemaking

1. Chairman Ron Johnson (R-WI) of the Senate Homeland Security and Government Affairs Committee released a report detailing the Department's rejection of comments and suggestions provided by the Securities and Exchange Commission during the fiduciary rulemaking process. According to the report, the Department ignored the suggestion of the Securities and Exchange Commission to examine the costs and benefits of alternative approaches to its fiduciary regulation. Senator Johnson has asked the Office of Management and Budget for more information about this failure. Why did the Department decide not to analyze alternatives to its preferred regulatory approach?

2. The administration has repeatedly referenced "hidden fees" as one of the problems with the current system and one of the reasons that the new rule is needed. Which fees specifically are "hidden" from disclosure under current securities law and the *Employee Retirement Income Security Act*?

Overtime Rulemaking

1. The Department's analyses of its overtime rule have been criticized by economists and the Small Business Administration as being incomplete and lacking transparency. The Department did not adequately consider the impact of the rule on important constituencies that will be dramatically impacted by the changes such as nonprofits organizations, institutions of higher education, and public sector employers. Furthermore, the Department's decision to adopt automatic increases will eliminate future opportunities for concerned stakeholders to provide input.

How can the Department justify finalizing a rule that did not involve proper consultation with all stakeholders, lacks accurate and transparent impact data, ignores regional differences in costs of living, and eliminates future opportunities for notice and comment?

2. Congress created exemptions from overtime requirements for certain employees. However, under the Department's overtime rule, employees who were never intended to be covered will now be overtime-eligible.

   How can a nonprofit serving adults and children with developmental disabilities in a rural community continue to provide vital services when faced with significant increases in administrative costs?

   What happens when no one at a nonprofit serving at-risk youth, including the executive director, is able to respond to emergency situations because their workplace smart phones have been taken and there is no budget for overtime pay?

Companionship Exemption

1. Now that the final companionship exemption regulations are in effect, how does the Department anticipate caregivers will be able to maintain their income levels, especially those who once worked more than 60 hours a week, by choice, but now have seen their hours capped at 40 hours per week?

2. How is DOL targeting its enforcement efforts to ensure compliance with the new companionship exemption regulations? Is the agency targeting government agencies, private sector agencies, registries, families or all of them?

OSHA Recordkeeping

1. Your testimony discussed the Occupational Safety and Health Administration's (OSHA) new Rapid Response Investigations (RRI) that are triggered by reporting requirements OSHA instituted in January 2015. Employers are required to report an injury within 24 hours and a fatality within eight hours. The Department's budget asked for over $6 million in enforcement funding to support this effort. Can you provide the number of accidents prevented through this initiative?

2. In your testimony, you highlighted the RRI process OSHA inspectors may undertake after an injury or fatality is reported. Explain how stakeholders were able to comment on this RRI during the recordkeeping comment period.

Mine Safety

1. The Mine Safety and Health Administration's (MSHA) budget allocates a 5 percent funding increase for coal enforcement and 3 percent funding increase for metal/non-metal

enforcement. As your testimony indicates, metal/non-metal mines experienced a significantly higher fatality rate last year. Why does MSHA continue to emphasize coal enforcement when the number of operating coal mines decreased by 26 percent last year?

Blacklisting

1. The Fair Pay and Safe Workplaces, or "blacklisting," Executive Order sets the dangerous precedent that employers are guilty until proven innocent. For example, an Equal Employment Opportunity Commission (EEOC) letter of determination or a complaint issued by a National Labor Relations Board Regional Director must be disclosed by an employer under the Executive Order. An employer can be denied a federal contract even though such a letter or complaint represents *allegation* of wrongdoing and *not a final determination* of wrongdoing reached after a fair, impartial adjudication process. Why are such non-final determinations being reported *before* employers have the opportunity to fully litigate the matters? How is this premature reporting not going to be viewed as an automatic strike against the employer during the bidding process?

2. The President's blacklisting Executive Order will have a substantial impact on the federal procurement process and dissuade certain prime contractors from using a variety of small business subcontractors. What is the Department's position on the loss of small business contractors and the overall reporting burden imposed on employers looking to compete for federal contracts resulting from this Executive Order?

3. The Executive Order ignores the current suspension and debarment process that already fairly and objectively excludes from federal contracting employers who violate employee rights and protections. As the 2015 proposed guidance is finalized, what protections are in place to ensure that those businesses with a history of complying with the law are not caught up in an unworkable and unnecessary regulatory scheme?

Federal Employees' Compensation Act

1. The *Federal Employees' Compensation Act* (FECA) program's "chargeback system" is structured in a way that assumes both the Department and the employing agencies are doing their part in ensuring workers' compensation payments are free of fraud and abuse. This structure provides the Department authority over an agency's annual chargeback bill.

   To this end, the U.S. Postal Service Inspector General (USPS IG) has sent to the Department numerous cases suspected of being fraudulent, but the Department has failed to take action. In fact, several of the Department's Office of Workers' Compensation Programs district offices — including Washington, D.C., Denver, Seattle, and Jacksonville — have reportedly been difficult to work with according to the USPS IG. The USPS is bringing cases potentially involving fraud to the Department's attention and yet no action has been taken. Please explain the Department's reasoning for not taking action on these cases.

Equal Employment Data Collection

1. Your testimony notes that the EEOC has proposed collecting pay data from employers. EEOC and the Department's Office of Federal Contract Compliance Programs would use this data to try to combat pay discrimination. However, serious questions have been raised about the utility of the data in combating discrimination. The job categories are very broad, and the data will not take into account experience, education, or skill level. Moreover, the pay data mandate will significantly increase compliance costs for employers in order to report information of questionable use. In addition, EEOC's proposal does not provide much in the way of assurances that the reported data will remain confidential. Given these concerns, will you recommend that EEOC reconsider moving forward with its flawed pay data proposal?

Temporary Foreign Workers

1. For several decades, the Department has typically processed H-2B labor certification applications within 30 days or less. Last year, the Department published new rules – without any public notice or comment – that dramatically altered the application process. Now, over a year later, significant portions of those regulations still have not been implemented, and the portions that have been implemented by the Department caused massive delays and backlogs that threatened to put several small companies out of business because they could obtain seasonal labor. Questions have been raised as to whether the Department's so-called "emergency processing" procedures reduced the delays. Has the backlog been cleared and returned to 30-day processing? How many additional staff were assigned to work on these cases in order to return to 30-day processing? What specific personnel or leadership changes were made within the Department to address the backlog and delays? Who in the Department was responsible for fixing the backlog and delays? As of today, how many certifying officers does the Department have approving H-2B applications?

2. The Department requires as part of the H-2B application process that the employer first obtain from the Department a prevailing wage applicable to the job. Until this year, this process routinely took two weeks. According to stakeholders, this process routinely took 60 or 70 days this spring, which then further delayed the application process. However, the prevailing wage data for all of these jobs is publicly available at the Foreign Labor Certification Data Center website, which is developed and maintained under a contract with the Department's Office of Foreign Labor Certification. Before they even file their request for a wage with the Department, employers can look up the wage themselves on this website in less than five minutes. Yet, the Department's April 2015 rules dictate that an employer cannot start any other part of the H-2B application process until the Department provides the wage. Has the Department returned to processing these wage requests within a two-week timeframe? Who in the Department was specifically responsible for fixing these delays in the prevailing wage determination process? How many people in the Department are responsible for the final sign-off and approval of a prevailing wage determination?

3. For employers filing H-2B applications with the same job category, season after season, year after year, would the Department consider amending its procedures to allow employers to simply look up the prevailing wage from the Foreign Labor Certification Data Center website, print a copy of the webpage for their records, and then move on to the next part of the application process?

4. As the Department acknowledged, the timely processing this spring of employer requests for labor certifications under the H-2B program did not happen. Due to this troubling administrative failure, close to 80 percent of employers trying to avail themselves of a seasonal, legal workforce did not obtain needed workers by the date of need. In April 2015, the Department adopted regulations that compressed its ability to process H-2B certification requests within 30 days, while also requiring a certifying officer to independently verify the information in each request rather than relying on an audit process to identify any problems. It should have been no surprise that reducing processing time for requests while simultaneously increasing the level of scrutiny each request receives would lead to significant delay in processing, regardless of an increase or decrease in requests received. Indeed, the impacted employers warned the Department of this problem in hundreds of comments submitted when the regulations were first proposed.

   The rationale provided for changing the timeline for processing was the Department believed a higher percentage of U.S. workers in the lower-skilled categories would be more likely to apply for a job advertised three months ahead of time versus a job advertised four months ahead. Please provide the number of U.S. workers who responded to advertisements in the 12-month period prior to the April 2015 regulations and the number of U.S. workers who have responded to advertisements since the adoption of the new regulations.

   How many employers have been found to be violating the wages and recruitment requirements by certifying officers in the actual certification process since the adoption of the April 2015 regulations? In comparison, how many employers have been found by an audit process to be in violation of the wages and recruitment requirements in the year prior to the adoption of the April 2015 regulations?

5. Since the beginning of the year, there have been significant delays in processing of petitions under both the H-2B and H-2A programs. At one point after January 1, 2016, only one out of more than 50 H-2A petitions had been processed in the statutory timelines the Department must follow. What caused the delays in H-2A processing? What did the Department do to resolve these delays? What needs to be done to ensure H-2A employers do not face such delays in the future?

State Workers' Compensation Opt-Out Laws

1. States across the country have been exploring workers' compensation "opt-out" laws that give employers the flexibility to create their own private plans to compensate workers for injuries sustained on the job, in lieu of state workers' compensation laws. You recently

announced the Department will undertake a report about opt-out alternatives to state-regulated workers' compensation and cutbacks in state workers' compensation benefits. Please provide details about this report and the increased attention the Department is giving to these opt-out laws. To date, what action has the Department taken in regard to monitoring such laws?

Rep. Wilson (SC)

Energy Employees Occupational Illness Compensation Program

1. South Carolina's Second Congressional District is home to a large number of former energy employees from the Savannah River site located in Aiken, South Carolina. We have all seen reports highlighting the problems with the Energy Employees Occupational Illness Compensation Program. According to the Department's Office of the Ombudsman's 2014 Annual Report to Congress, only 60 percent of the total cases are from unique individuals, indicating that a large number of people are submitting multiple claims. I have heard reports from constituents that some people have approved claims from one illness, but they have to go through the same difficult process if they develop complications due to their treatment or another covered disease. It seems that this program burdens applicants with excessive paperwork and a complicated claims process.

   Do you believe that the Energy Employees Occupational Illness Compensation Program functions as it was intended and is able to meet the needs of those who rely on the program for medical care?

Apprenticeship Programs

1. Every year it seems the Department requests more money for the creation of a national apprenticeship program. I am grateful that South Carolina has been successful in creating world class apprenticeships through programs like Apprenticeship Carolina, Savannah River Site, and MTU America. While South Carolina has had this success, there remains nominal autonomy at the state level; states are required to use the Department's regulations as a baseline for their own. What you refer to as alignment, I would describe as coercion.

   Has the Department considered whether granting states greater autonomy in regulating the program could more-effectively promote participation?

Blacklisting

1. We have continued to see the administration placing burdensome requirements on businesses, particularly those who contract with the federal government. The blacklisting Executive Order, issued in July 2014, outlines specific labor laws and Executive Orders

that employers must comply with to be eligible for a federal contract. That Executive Order does not include all the administration's latest administrative mandates, like the paid leave requirements.

Under the blacklisting Executive Order, should employers expect to report compliance with new executive-imposed requirements? Is there a limit on what employers will be required to report on under this Executive Order?

2. The Office of Labor Compliance Advisors (OLCA) was specifically denied funding for implementation of the blacklisting Executive Order in last year's Omnibus Appropriations bill signed into law on December 18, 2015. In the bill's accompanying Managers' explanatory statement, it is clear no money should be used for the OLCA. As a result, the Department appears to have moved implementation efforts to the Wage and Hour Division, as evidenced in the Fiscal Year 2017 congressional justification.

   How is DOL implementing the Executive Order given the loss of appropriations for the OLCA's operations, which would presumably be responsible for proposing, finalizing, and implementing all guidance?

Rep. Foxx (NC)

Workforce Development

1. In my time here I have worked to ensure my constituents have the opportunity to develop in-demand skills and "earn while they learn" through all kinds of employer-led workforce development. This approach to workforce development is well-suited to many jobs and has proven effective for both employers and employees.

   For these reasons I am disappointed by the Department's dogmatic promotion of registered apprenticeships at the expense of other earn-and-learn models. The number of Americans participating in earn-and-learn apprenticeship-style programs not registered with the Department exceeds the number of Americans participating in the programs registered with the Department. I am deeply concerned the administration's promotion of the registered apprenticeship program is another attempt to pick winners and reward favorites. Has the Department considered how these proposed subsidies could disadvantage businesses which are justifiably uncomfortable working with the Department and their employees?

Paid Leave Rulemaking

1. There are concerns that the paid leave rule for federal contractors is one more in a series of barriers to entry in the government market. In addition to this proposed rule, contractors have faced a number of new compliance obligations in recent years. These barriers, in many cases, have resulted in the government paying more for inferior products relative to what was available in the commercial market. As a result, contractors who can bring innovation and efficiency to the federal procurement market may be less

inclined to sell to government agencies and incur the associated compliance expense and risk. How does the Department respond to such concerns?

2. The proposed paid leave rule for federal contractors expressly states that it is not intended to excuse a contractor from providing more leave than contemplated by the rule if required by a collective bargaining agreement. However, the proposal does not state what should happen when a collective bargaining agreement provides sick leave or paid time off differently than required under the proposed rule. Collective bargaining agreements are generally the product of lengthy union negotiations where both parties are sophisticated and represented by counsel in reaching an "arms-length" agreement. In some instances, the parties may have agreed to provide less sick leave in exchange for greater wages or other benefits. Would the Department consider allowing the terms of a collective bargaining agreement for the accrual of sick leave – whether for more or less leave than proscribed by the rule – to be acceptable in lieu of the rule's requirements? If not, why not?

3. The proposed paid leave rule requires employees to receive one hour of paid sick leave for every 30 hours worked "on or in connection with" a government contract. However, there are many instances in which it will be impossible or impracticable for contractors to account for the exact number of hours that an employee spends working "on or in connection with" a covered contract. Government contractors, particularly contractors providing commercial item products and services, often do not record employee time on a contract-by-contract basis, or their employees perform a mix of government contract and non-government contract work. In such cases, what records could a company keep to distinguish between work done on government contracts versus commercial contracts? Is the only option for a company to give these employees the maximum 56 hours required by the rule?

   In the situation above, would the Department allow a company to apply an average of the amount of covered work done by the company to these employees' time in order to determine the amount of sick leave that must accrue? For example, if, on average, 25 percent of a company's work is on covered contracts, could these employees accrue leave for 25 percent of the time worked each week?

Rep. Walberg (MI)

1. Under the Obama administration, MSHA tabled efforts to create a drug testing program for miners. Given MSHA's priority to keep miners safe, please explain why this effort was suspended when it could help to ensure miners are afforded the confidence to know the person working next to them is not impaired by drugs or alcohol?

2. What policies has MSHA adopted to encourage drug and alcohol-free workplaces and what actions has MSHA taken to promote and reinforce the rights of employers to conduct drug testing?

3. Is the agency aware of this or similar allegations, and, if so, please provide a description of any actions taken by MSHA to address these allegations, and please provide all relevant information, documents, and communications related to these allegations and the agency's responsive actions.

Proposed Rule on Criteria and Procedures for Assessment of Civil Penalties

1. Does MSHA have any quantitative data, such as analyses of assessed penalties versus safety performance, either relating to individual mining operations or mining sectors, to show that a relationship exists between penalties and safety performance? If so, please provide a copy of such data and any report or study supporting the agency's proposal to increase and change assessments.

2. This proposed rule makes significant changes to the way in which inspectors assign point values to violations. What steps has MSHA taken to create guidance and training so inspectors apply these changes and assign points in a uniform manner? What steps has MSHA taken to make any such guidance or training available to the regulated community?

3. Did MSHA contact industry stakeholders, including business and labor, in crafting the proposed rule before releasing it to the public? If so, which groups did the agency contact, and is there a report that provides information about the results of the interactions?

4. The regulated community has expressed the need for MSHA to conduct a 6-month test program that compares assessments under the existing Part 100 guidelines with assessments under the proposed guidelines. Does MSHA intend to conduct the pilot program that industry stakeholders requested, or does the Agency have a similar plan that will realistically assess how the rule will affect the regulated community before full implementation?

Pattern of Violations Rule

1. In January 2013, MSHA finalized a rule revising its existing regulation for Pattern of Violations (POV). Beginning with the rule's effective date on March 25, 2013, please provide the Committee the following information:

    a. How many facilities have been placed in POV status?

    b. How many facilities have filed Corrective Action Programs (CAPS)?

    c. How many of the CAP-facilities have reduced the significant and substantial (S&S) violation frequency rate by 50 percent, or reduced the S&S frequency rate to a level at or below the median S&S frequency rate for mines of a similar type?

2. Since the effective date of the Final Rule, how many operators have identified mistakes in data which led to the facilities being placed in POV status? In addition please provide how many of these mistakes can be characterized as:

    a. Citations entered incorrectly?

    b. Citations not yet updated in MSHA's computer system?

    c. Decisions rendered by the Mine Safety and Health Review Commission, thus nullifying the citations?

    d. Contested citations?

    e. Citations issued in error to an operator instead of an independent contractor?

Wellness Programs

1. As you know, employers sponsor wellness programs to improve the well-being of their workforce by incentivizing employees and their families to adopt healthy lifestyles. This reduces health care costs and increases productivity. One of the *Patient Protection and Affordable Care Act's* few bipartisan provisions encouraged and expanded these wellness programs. However, the EEOC continues to wage an aggressive attack on employer wellness programs. Last year, the EEOC issued proposed rules (finalized in May 2016) to amend regulations under the *Americans with Disabilities Act* and the *Genetic Information Nondiscrimination Act*, which have the effect of reducing the ability of employers to offer these programs. That's why I cosponsored H.R. 1189, the *Preserving Employee Wellness Programs Act*. The bill protects wellness programs from EEOC's counterproductive and burdensome requirements. Do you share our concerns that EEOC's proposed rules are counterproductive? Was the Department in contact with EEOC as it finalized the proposed rules?

2. Private sector wellness programs benefit employees, their families, and employers. But, employers need flexibility in developing and administering these plans. The *Preserving Employee Wellness Programs Act* (H.R. 1189) improves current law to provide employers with certainty and flexibility in structuring their wellness programs. How is the Department ensuring that wellness programs flourish, so that health care costs are minimized for employer sponsored coverage and employees alike?

Blacklisting

1. The Department issued guidance implementing the blacklisting Executive Order in May 2015. When can we expect that guidance to be finalized? What will be the effective date of that guidance?

2. The proposed blacklisting guidance stated that additional guidance would be issued on equivalent state labor laws and subcontractor reporting requirements at a later date. What

is the status of this follow-up guidance and will it be proposed for notice and comment? Given the breadth of this secondary guidance, shouldn't that information be proposed before finalizing the May 2015 guidance, especially in light of the burdensome compliance requirements and the need to implement new reporting systems?

Rep. Heck (NV)

1. On March 13, 2014, the President issued a memorandum instructing you to update the Department's overtime regulations under the *Fair Labor Standards Act*. The final rule issued by the Department increases the salary threshold for determining which executive, administrative, and professional employees (or "white collar" employees) are eligible for overtime compensation.

   I have heard from many of my constituents representing a cross-section of industries who are extremely concerned that this rule will seriously harm their industries; and ultimately force a reduction in hours or elimination of positions altogether.

   This issue will affect businesses of all sizes, even larger employers like the resort casino industry in my state, Nevada. Employees of these resort casinos employ nearly 28 percent of the state's workforce. Increasing the salary threshold to $47,476 will dramatically increase the labor burdens on these employers. This will likely result in workers being shifted to hourly status and facing reduced hours or even demotions. At a time when the cost of living continues to rise, how can the Department defend this rule which takes direct aim at hardworking middle-class Americans and threatens their job and financial security?

Rep. Stefanik (NY)

1. I wanted to discuss your agency's changes to federal overtime exemptions that will have sweeping unintended and adverse impacts on employees and employers across the country. Millennials will be particularly hard hit by the unprecedented increase in the salary threshold. Recent college graduates across the country will see career pathways and opportunities for flexible work arrangements diminish significantly. There is not a single state in which median entry level wages for full-time workers with a college degree comes even close to $47,476, and this challenge is even more difficult in places like the North Country where companies already face challenges attracting millennial talent. What this means is more college graduates will enter the workforce as hourly employees and will struggle to pay off college loans and make the important steps toward financial independence that so many young people today wrestle with. The rule's annual increase to the salary threshold will only exacerbate these negative impacts as opportunities to move into salaried, exempt positions become further and further out of reach.

   What analysis did the Department conduct in the development of this rule regarding the impacts on career advancement opportunities for millennials entering the workforce with student loan debt?

Did the Department evaluate the impact that this rule will have on the ability of areas like upstate New York to continue to attract young people when those individuals will be stuck in hourly jobs with few opportunities for upward mobility in the workforce?

Ranking Member Scott (VA)

1. In 2007 the Office of Legal Counsel (OLC) issued a memorandum in response to a request from a Department of Justice grantee, World Vision, to be exempted from a statutory employment nondiscrimination provision.[1] World Vision argued that complying with this nondiscrimination provision unduly burdened their religion under the *Religious Freedom Restoration Act* (RFRA). The OLC granted this request in 2007 authorizing World Vision to continue to discriminate against prospective employees on the basis of religion in taxpayer funded programs. Over the past nine years, the Department of Justice has not only allowed this exemption to stay in place for World Vision, but this taxpayer funded discrimination has been extended to other programs in other agencies. Is this memo limited to grantees?

    a. Does the Department allow faith-based organizations receiving DOL grants to discriminate against Muslims, Jews, and Catholics?

    b. As a hypothetical, can a faith-based service provider receiving DOL funds to facilitate training and employment services to formerly incarcerated juveniles discriminate against LGBTQ social workers, counselors, and other staff because of their sexual orientation or gender identity?

    c. What recourse does the Department provide to individuals whose civil rights are statutorily protected but experience discrimination in taxpayer-funded programs as a result of the OLC memo?

    d. What steps are you taking to end this federally-sanctioned discrimination and to ensure that organizations operating programs on behalf of the federal government are aware of their civil rights obligations?

2. The President has issued the Executive Order on Fair Pay and Safe Workplaces, which requires bidders and contractors to provide information on labor law violations over the previous three years. This will help ensure that contracting officers have full information when determining whether a prospective contractor is "responsible." Opponents label this policy of screening contractors for their labor compliance record as "blacklisting."

    a. What is your response to this blacklisting argument? Is that a fair characterization of this Executive Order, and if not, please explain why.

[1] https://www.justice.gov/sites/default/files/olc/opinions/2007/06/31/worldvision.pdf

b. The Executive Order requires that the Federal Acquisition Regulatory Council issue implementing regulations and requires the DOL to issue guidance. What is the status of the rules and guidance?

3. The Department proposed regulations related to the Black Lung Benefits Program which requires parties – including employers, claimants, attorneys and other authorized representatives – to disclose all medical information developed in connection with a claim for benefits, even when the party does not intend to submit the information into evidence. That rule was proposed on April 28, 2015, and the comment period closed June 29, 2015. Twenty comments were received.

   What is the status of this rule and when will a final rule be issued?

4. Patriot Coal has recently liquidated after filing for bankruptcy, and the Black Lung Disability Trust Fund became liable for approximately $65 million in uninsured claims costs because Patriot Coal did not have adequate surety to back up its self-insured black lung claims liability.

   a. What is the Department doing to ensure that there is adequate surety posted for the rest of the self-insured operators?

   b. Has the Department estimated the maximum potential financial exposure to the Black Lung Disability Trust Fund from self-insured operators where there is insufficient surety and responsible mine operator has filed for bankruptcy or is anticipated to do so in the foreseeable future?

   c. What is the range of that potential liability to the Trust Fund?

   d. Does the Department have adequate tools to adequately defend the financial interests of the Trust Fund when self-insured operators do not have sufficient surety at the time they file for bankruptcy?

5. Charges for compound drugs provided to injured workers under the Federal Employees' Compensation Act have escalated at a steep rate since 2013. The costs to the U.S. Postal Service for compound drugs from FECA claims are expected to exceed $150 million in FY 2016 – up from only $4.9 million in FY 2012. The USPS IG recently issued a report (HR-MA-16-003) quantifying this dramatic increase in the compound drug costs and has recommended that DOL adopt a fee schedule and reimbursement caps.

   a. What has DOL done to address the concerns of the U.S. Postal Service since this matter was brought to the attention of the Office of Workers' Compensation Programs?

   b. Will the DOL adopt a fee schedule and reimbursement caps for compound drugs? If so, on what date will these kick in?

c. Is DOL tracking whether other federal agencies are experiencing similar percentage increases in compound drug costs for injured workers receiving benefits under FECA?

d. Please provide data on the total amount paid out by OWCP for compounded drugs under the FECA program between FY 2011 and FY 2016 year to date.

Rep. Davis (CA)

1. Earlier this year, the Department, delayed the release of WIOA regulations mandating competitive bid process for One-Stop Career Centers from January 2016 until June 2016. Local workforce boards have communicated that shifting to a procurement process is a complex and time consuming process. Considering the reduced time in which to complete the proposed shift by the July 2017 deadline, what steps is the Department of Labor taking in providing flexibility or an extended deadline to states to meet the new standards?

Rep. Fudge (OH)

1. Apprenticeship programs are a proven on-the-job training strategy that put workers on a pathway to the solid middle class jobs. Research suggests that not only do apprentices earn an average of $50,000 after completing training but for every dollar taxpayers invest on apprenticeships we see $27 in benefits. The Department has made great strides in lifting up this successful on-the-job training model. Our country is currently facing a skills gap, which will only increase with time. Over 70 percent of organizations cite "capability gaps" as their biggest challenge. What steps is the Department taking to provide our current workforce with more dynamic skills that will allow them to continue to advance alongside our evolving economy?

   We talk a lot about moving young people from high school and community colleges to skilled jobs. How is the Department strengthening pipelines between various sectors in order to repurpose our workforce and support our middle-aged workers in career transitions?

2. I am concerned that key populations are facing significant barriers to participating in registered apprenticeships. Can you tell me more about what the Department is planning to do to expand apprenticeship programs to ensure that more women and people of color are recruited for and retained in registered apprenticeship programs?

3. We all know how difficult it is for formerly incarcerated individuals to get back into the workforce. Everyone deserves a second chance in life, including those who have served their time and repaid their debt to society. The vast majority of individuals released from prison are trying their best to get back on their feet, become productive members of their communities and get back into the workforce. One significant barrier to finding meaningful employment is the "box" on employment applications asking applicants to disclose upfront whether they have ever committed an offense. Can you tell us where the

Department is on implementation of "ban-the-box" at both the federal and local level? Can you speak about the work you and the Department are doing to help these folks get back on their feet and into good jobs?

Rep. Bonamici (OR)

1. Mr. Secretary, a business owner in my district has brought to my attention that a particular OSHA regulation on flammable and combustible liquids in container and portable tank storage is egregiously outdated. The section is based on a version of the National Fire Protection Association fire code published in 1969 that has since separately been updated numerous times with the most recent edition in 2015. Several major fires have resulted in improper storage of ignitable liquids. In June of 2015, a letter was sent to Dr. Michaels from a group of interested parties named PackSafe regarding the serious safety issue concerning this regulation, OSHA 29 C.F.R. 1910.106 based on the 1969 version. In response, although the Department acknowledged the outdated regulation, they did not provide a plan to update it. OSHA's mission is to ensure workers are safe. To meet this mission, it is important that businesses that use containers to store their products are following the best available science to ensure the safety of life and property. How does OSHA plan to update the references in the regulations to ensure a safe and healthy workplace for workers? What do you need from Congress to make sure this regulation can be updated?

2. Unemployment benefits serve a critical role in helping people while they are seeking work. I am concerned about the unemployment benefit gap facing many school employees across the country. In my home state of Oregon, our legislature recently passed a bipartisan, narrowly-tailored solution to this challenge with support from both the school employee union and the school boards association (SB 1534, 2016 Oregon Session). The bill aims to fix the benefit gap facing approximately 45 "non-professional" school employees in Oregon each year who leave their job for unavoidable reasons and whose unemployment benefits are lost when schools are on break. Custodians should not lose their unemployment benefits simply because they work in a school rather than an office building.

   There is agreement in Oregon at the state and local level to keep this narrow group of former school employees from losing their benefits. Unfortunately, despite the Oregon legislation, the agreement among stakeholders and the Department's flexibility for "non-professional" employees, the Department has stated that this solution is unacceptable.

   The Department is provided with flexibility over this class of workers; please explain why a narrowly-drafted law, like Oregon's, is problematic. Are there alternative ways to address this group of employees so their benefits do not expire? The unemployment insurance program is premised on a partnership between the state and federal governments, so please explain specifically what steps the Department is taking to assist states in their efforts to design and implement programs that best fit their needs and comply with federal law.

[Secretary Perez's response to questions submitted for the record follow:]

U.S. House of Representatives
Committee on Education and the Workforce
Hearing on "Examining the Policies and Priorities of the U.S. Department of Labor"
March 16, 2016
Questions for the Record

Chairman Kline (MN)

Workforce Development

1. In our work to reform an outdated workforce development system, Congress was intentional in requiring contracts for the one-stop centers to be approved in an open, competitive process. The Committee has received troubling reports about local workforce development boards working to circumvent the competitive process by awarding nominal operations contracts competitively but then awarding the provision of one-stop services to state or local agencies on a noncompetitive basis. Competition helps ensure American job-seekers receive the assistance they need from high-quality providers. What steps is the Department of Labor (Department) taking to ensure an open, competitive process and that there is no conflict of interest in awarding center services?

   Response: The Department acknowledges the intent of Congress to improve one-stop operations through competition. The WIOA Joint Final Rule recognizes that intent and, in instances in which a State is conducting the competition, requires States to follow the same competitive process to select the one-stop operator that they use for non-Federal funds. The rule also requires local areas to follow procurement standards for competitive processes as outlined in the "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (Uniform Guidance), in 2 CFR part 200 (http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl).

   The mandatory competition requirements in 20 CFR 678.605(c) of the WIOA Joint Final Rule states that the competitive process must be based on local procurement policies and procedures and the principles of competitive procurement, as described in the Uniform Guidance. Under the Uniform Guidance at 20 CFR 200.318(a), all procurements carried out under local procurement policies must conform to applicable Federal law and the Uniform Guidance standards. This includes establishing appropriate conflict of interest policies and procedures, where necessary. In addition, a local board only may be selected as the one-stop operator if that selection is the result of a competitive process consistent with the Uniform Guidance and is agreed to by both the chief elected official and the Governor as provided in Section 678.610(d).

   Non-Federal entities, including subrecipients of a State (such as Local WDBs) may select a one-stop operator through sole source selection when consistent with local procurement policies and procedures which conform to the Uniform Guidance set forth at 2 CFR 200.320.

The Uniform Guidance states, at 2 CFR 200.320(f), that procurement by noncompetitive (sole source) proposals is procurement through solicitation of a proposal from only one source which may be used only when one or more of the following circumstances apply:

a. The item or service is available only from a single source;

b. The public exigency or emergency for the item or service will not permit a delay resulting from competitive solicitation;

c. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or

d. After solicitation of a number of sources, competition is determined inadequate, whether for reasons of number or quality of proposals/bids.

All grant recipients of Federal Funds must adhere to the Uniform Guidance at 2 CFR 200. Contained in the Uniform Guidance are the Procurement Standards which require grant recipients and subrecipients to have code of conduct policies that include or address real, apparent, and organizational conflict of interest issues. The Joint Rule explains the need for conflict of interest policies along with firewalls when one entity takes on more than one role including the role of a one-stop operator.

Through the Departments of Labor's and Education's use of transition authority under section 503 of WIOA, States and local areas have until July 1, 2017 to implement these requirements. At that time, a one-stop operator selected under a competitive process must be in place and operating one-stop centers in all local areas.

The Department recognizes that this is a complex policy and routinely provides technical assistance to help local areas and states comply with these provisions. The Department also plans to issue guidance in this area. The Department will continue to monitor States and local boards to confirm that they have policies in place so that competition is conducted according to the requirements and spirit of WIOA and the Final Rules.

2. Paying for results is an important way to deliver effective taxpayer-funded programs. The "pay-for-success" approach can create incentives to assist harder-to-serve populations, such as returning veterans, the long-term unemployed, or at-risk youth, and payments are only made if specific outcomes are achieved.

   While the Department has hosted webinars and PowerPoint presentations discussing the availability of pay-for-performance contracting, more can be done to raise awareness about this innovative contracting. What measures is the Department taking to provide state and local leaders the technical assistance necessary to implement pay-for-performance contracting?

   Response: The Department greatly appreciates the flexibility Congress provided under WIOA for pay for performance contracting. We are currently developing guidance and

technical assistance to support states and localities which are pursuing pay for performance or have expressed interest in this innovative contracting strategy. We plan to issue guidance in Program Year 2016, and, through technical assistance activities, to promote a better understanding throughout the workforce system of how to execute a pay for performance strategy. The guidance will articulate important principles to follow when pursuing a pay for performance strategy. We also plan to include lessons learned from the Department's Pay-for-Success grants. Additionally, we hope to see more state-level activity in the future, since some states have expressed interest in pursuing pay for performance strategies.

The Department has issued a Training and Employment Guidance Letter (No. 2-16) providing guidance to grantees for reporting financial expenditures, instructions, and other guidance. Included in this was guidance on reporting pay-for-performance expenditures.

3. The *Workforce Innovation and Opportunity Act* (WIOA) was designed to reduce administrative costs and unnecessary bureaucracy so state and local agencies can better focus on helping individuals get back to work. The law empowers each state to submit a single, unified state plan for the core programs authorized in WIOA. States have been in the process of developing these plans for many months despite the Department's repeated delays implementing the law.

   There are a number of concerns with the Department's decision to require states to submit plans through a cumbersome, one-size-fits-all web portal. Leaders of state workforce agencies have raised concerns about potential retaliation should they submit their plans as a single document. While drop-down tabs and word limits might reduce administrative costs in Washington, the submission of state plans in this manner requires duplicative work by state workforce agencies and transforms state plans into mere compliance documents. What assurances will the Department provide that states will not be unfairly penalized for submitting plans as written rather than in a piecemeal fashion?

   Response: All 57 unified and combined State Plans were approved on or before June 30, 2016, and no states were penalized for any reason. The five Departments – Labor, Education, HUD, HHS and USDA – with responsibility for the approval of combined and unified plans determined that a single "point-of-entry" for the State submission of the strategic plans was important; it would facilitate a cohesive approach to planning for State agencies, signal a coordinated review by federal partners, and provide a consistent format that is transparent to any interested party. The portal allows the federal partners to make all State Plans available to the general public and makes those plans accessible to individuals with disabilities – in other words, in compliance with section 508 of the Rehabilitation Act of 1973, as amended by WIOA. The portal also allows for searches across State plans based on specific topics such as career pathways or sector strategies, enabling States and any interested stakeholders to search, review, and share information in the plans more easily than a less centralized system.

In order to conserve Federal resources and take advantage of technology already used by the states, the Departments built upon an existing portal originally developed by the Rehabilitation Services Administration for its Vocational Rehabilitation agencies' use in previous strategic planning cycles to use as the single "point-of-entry." In addition to the benefits to State agencies and the public transparency of State plans, the portal allowed for the review and approval of 57 State Plans concurrently by multiple agencies within the short statutory timelines. A similar process will be used again as States modify their plans. We are aware of the challenges states faced using the single portal for the first time. Now that one State Plan cycle is complete, the Departments plan to review the portal's features and gather state feedback to improve the portal's utility for State users and other stakeholders.

Transitional Reinsurance Fee

1. Those who administer self-funded health plans are required to pay a reinsurance fee, which was created in the *Patient Protection and Affordable Care Act.* However, neither the plans nor the employees covered by the plans receive any funds from the transitional reinsurance fee program. This is the case even though self-funded group health plans also have participants that are high risk and chronically ill, experiencing significant medical claims. As one of the primary agencies with jurisdiction over private, self-funded group health plans, the Department should be concerned about the impact of additional costs on the ability of employers to maintain these plans and the quality of health care coverage Americans receive through these plans. How much in fees have been, or are estimated to have been, collected from self-funded plans for each year in the reinsurance program (2014-2016)?

   Response: The transitional reinsurance program, and collection of reinsurance contributions, is administered by HHS for all applicable health plans and issuers, including self-funded group health plans. The Department of Labor does not collect or maintain data on contribution amounts that have been collected by HHS.

Employer Notice of Coverage

1. Under the *Patient Protection and Affordable Care Act*, employers were to provide a "Notice of Coverage Options" document to existing employees by October 1, 2013, detailing any employer-sponsored coverage options provided. Approximately one week before that deadline, the Department issued a "Frequently Asked Questions" document indicating there would be no penalties for failure to provide the document to employees by the October 2013 deadline. However, for newly hired employees, businesses are mandated to provide the Notice of Coverage Options document within two weeks of their start date. Will there be penalties for failure to distribute this document to newly hired employees? If so, when will the penalties begin?

   Response: No. The Patient Protection and Affordable Care Act amended the Fair Labor Standards Act (FLSA) section 18B to require employers subject to the FLSA to provide employees a notice of coverage options consistent with certain form and content

requirements. Technical Release 2013-02 (May 8, 2013) stated that employers must provide the notice of coverage options to current employees not later than October 1, 2013, and, for employees newly hired after that date, "within 14 days of an employee's start date." The Department's FAQ (mentioned in the question) provided that if a company is covered by the Fair Labor Standards Act, it should provide a written notice to its employees about the Health Insurance Marketplace by October 1, 2013, but there is no fine or penalty under the law for failing to provide the notice. In addition, there is no fine or penalty under the law for failing to provide the notice to newly hired employees. However, the Department urges all employers to provide the notice of coverage options to all newly hired employees as this notice provides important information necessary for employees to make informed decisions regarding their coverage options.

Fiduciary Rulemaking

1. Chairman Ron Johnson (R-WI) of the Senate Homeland Security and Government Affairs Committee released a report detailing the Department's rejection of comments and suggestions provided by the Securities and Exchange Commission during the fiduciary rulemaking process. According to the report, the Department ignored the suggestion of the Securities and Exchange Commission to examine the costs and benefits of alternative approaches to its fiduciary regulation. Senator Johnson has asked the Office of Management and Budget for more information about this failure. Why did the Department decide not to analyze alternatives to its preferred regulatory approach?

   Response: The Department consulted with staff of the SEC throughout the process of developing the proposed and final conflict of interest rule and related prohibited transaction exemptions. As part of this consultative process, SEC staff provided technical assistance and information to the Department regarding the SEC's separate regulatory provisions and responsibilities, retail investors, and the marketplace for investment advice. Although the Department and the SEC have different statutory responsibilities, the Department consulted with the SEC on regulatory issues in which our interests and responsibilities overlap, particularly where action by one agency may affect the parties regulated by the other agency. Contrary to the assertions made in Sen. Johnson's February Committee report, the engagement between the Department and the SEC was comprehensive and their input was carefully considered. The technical assistance and input that the SEC staff provided were instrumental to the Department's efforts to ensure that the final rule struck a balance between adding important additional consumer protections for tax-favored retirement savings accounts while minimizing undue disruptions to the many valuable services the financial services industry provides today.

   Further, the Department did not ignore the need to examine the costs and benefits of alternative approaches in its regulatory impact analysis (RIA) to the final conflict of interest rule and related exemptions. As required by Executive Order 12866, the Department considered the costs and benefits of 15 different alternatives to the regulation and exemptions and provided a thorough discussion of these alternatives in Chapter 7 of the RIA (available at: https://www.dol.gov/ebsa/pdf/conflict-of-interest-ria.pdf).

2. The administration has repeatedly referenced "hidden fees" as one of the problems with the current system and one of the reasons that the new rule is needed. Which fees specifically are "hidden" from disclosure under current securities law and the *Employee Retirement Income Security Act*?

   Response: The term "hidden fees" refers to indirect payments to an adviser from any source other than the advice recipient, such as revenue sharing fees, which are paid to the adviser from a mutual fund. These fees are generally not transparent to the advice recipient; therefore participants, beneficiaries, and IRA owners often are not aware they are paying such fees. The Department cites research in Chapter 3 of the RIA (https://www.dol.gov/ebsa/pdf/conflict-of-interest-ria.pdf) showing how these hidden payments incentivize advisers to act in their own interest rather than their clients' best interests.

Overtime Rulemaking

1. The Department's analyses of its overtime rule have been criticized by economists and the Small Business Administration as being incomplete and lacking transparency. The Department did not adequately consider the impact of the rule on important constituencies that will be dramatically impacted by the changes such as nonprofits organizations, institutions of higher education, and public sector employers. Furthermore, the Department's decision to adopt automatic increases will eliminate future opportunities for concerned stakeholders to provide input.

   How can the Department justify finalizing a rule that did not involve proper consultation with all stakeholders, lacks accurate and transparent impact data, ignores regional differences in costs of living, and eliminates future opportunities for notice and comment?

   Response: As you may know, on November 22, 2016, a federal district court judge in Texas issued a preliminary injunction that enjoins the Department from implementing and enforcing the overtime final rule. The Department remains of the view that the rule is legally sound and, with the Department of Justice, is reviewing the court's opinion and order and considering any next steps.

   Between the issuance of the March 13, 2014, Presidential Memorandum and the issuance of the NPRM, the Department conducted extensive outreach, meeting with over 200 organizations around the country. A wide variety of stakeholders attended the listening sessions, including employers, business associations, non-profit organizations, educational institutions, employees, employee advocates, state and local government representatives, and small businesses. The Department received comments from more than 270,000 individuals and organizations on the NPRM during the sixty-day comment period. In addition, there were 63 meetings held as part of OIRA's stakeholder meetings under EO 12866; participants in these meetings can be found at reginfo.gov. Further, as part of the rulemaking process, the Department conducted an extensive, thorough study

of the overtime rule's economic impact, which can be found in the Federal Register pages 32448-32459 (a summary of the economic impact analysis can be found here).

The Department set the salary level at the point necessary to fulfill the statutory purpose of identifying those workers who may qualify as bona fide executive, administrative, or professional employees. In order to qualify for the "white collar" exemptions, in addition to being paid on a salary basis at not less than the salary level set forth in the regulations, employees must perform bona fide executive, administrative, or professional duties ("the duties test"). The salary level and the duties test work together to define who is exempt from the FLSA's minimum wage and overtime requirements. Given the goal of revising the regulations so they effectively distinguish between overtime-eligible white collar employees who Congress intended to be protected by the FLSA's minimum wage and overtime provisions and bona fide executive, administrative, and professional employees whom Congress intended to exempt, setting a lower salary level would have required the Department to revert to a more rigorous duties test, a step overwhelmingly opposed by commenters representing employers.

Since the very first regulations implementing the Fair Labor Standards Act in 1938, there has been a national salary level, rather than multiple salary levels for different regions, industries, or employer sizes. Based on comments received, DOL carefully considered low-wage regions and made a significant change from the proposed rule: Initially, we proposed a level based on nationwide salaries, but the final rule is based on salaries in the lowest-wage Census region (currently the South). The new salary level is appropriate for employers across a broad range of regions, industries, and business sizes.

Finally, the Final Rule does not eliminate future opportunities for notice and comment on the salary level. The Department's automatic updating mechanism exactly maintains the standard the new rule establishes by resetting the salary threshold to keep it at the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census region. Thus, automatic updating preserves the status quo while leaving open the opportunity for policymakers to change the method for determining the salary threshold in a future notice and comment rulemaking if they ever believe such a change to be necessary.

2. Congress created exemptions from overtime requirements for certain employees. However, under the Department's overtime rule, employees who were never intended to be covered will now be overtime-eligible.

   How can a nonprofit serving adults and children with developmental disabilities in a rural community continue to provide vital services when faced with significant increases in administrative costs?

   What happens when no one at a nonprofit serving at-risk youth, including the executive director, is able to respond to emergency situations because their workplace smart phones have been taken and there is no budget for overtime pay?

Response: We recognize and value the enormous contributions that non-profit organizations make to the country. Non-profit organizations provide services and programs that benefit many vulnerable individuals in a variety of ways.

When Congress passed the Fair Labor Standards Act, it did not provide an exemption from overtime requirements for non-profit organizations. The principles of the law are nearly universal and establish the most fundamental protections in the labor market. As such, the employees of non-profits are entitled to the same protections as for-profit employees. Many non-profits perform the same services as for-profits, and their employees can be indistinguishable. For example, an assistant manager at a cafeteria in a hospital or museum is performing the same responsibilities—and is owed the same basic protections—as one working at a casual dining restaurant.

The Department of Labor estimates that non-profits will not be unduly impacted by the final rule. Only 5 percent of all workers in the non-profit sector will be affected by this rule.

In the final rule, the Department of Labor modified the proposed salary level to account for the fact that salaries are lower in some regions than others. This lower final salary level will provide relief for non-profit employers, just as it does for employers in low-wage industries. As with other employers, non-profits have a variety of options in dealing with the salary level increase, including options that result in no additional cost to the nonprofit employer. In addition, unlike other employers, non-profit organizations may use volunteer services if certain conditions are met.

Many non-profit organizations are very supportive of the new rule. They strive to use management strategies that reflect the principles they espouse, while adjusting to the new requirements. In addition to their mission focus, they recognize their responsibilities to their own employees, many of whom are low-income and vulnerable.

The Department is committed to thoughtful, responsible implementation, and continues to engage with non-profit organizations and associations to provide technical assistance on both the rule and the Fair Labor Standards Act.

Companionship Exemption

1. Now that the final companionship exemption regulations are in effect, how does the Department anticipate caregivers will be able to maintain their income levels, especially those who once worked more than 60 hours a week, by choice, but now have seen their hours capped at 40 hours per week?

   Response: Home care workers help countless Americans live at home, go to work, and participate more fully in their communities. They provide valuable services, and they deserve fair wages. Due to out-of-date regulations, however, for too long these workers were excluded from the Fair Labor Standards Act's minimum wage and overtime protections, and from the FLSA's basic promise of a fair day's pay for a fair day's work.

Before this Final Rule was published, an estimated 40 percent of home care workers rely on public assistance to make ends meet. The Home Care Final Rule gives these nearly two million workers the same basic protections already provided to most U.S. workers, including those who perform the same jobs in nursing homes.

In implementing the Final Rule, our ultimate goal is to ensure that consumers continue to receive high-quality care and that the wages home care workers receive reflect the importance and dignity of that work. We can and should balance the rights of people with disabilities to stay in their communities with the rights of their caregivers. Employers of home care workers have a number of options for complying with the Fair Labor Standards Act. In the years since the Rule was published, the Department has led an exhaustive outreach campaign to engage the regulated community, and we have consistently emphasized, and provided technical assistance on, the importance of implementing the Home Care Final Rule in a manner that protects both workers and consumers.

2. How is DOL targeting its enforcement efforts to ensure compliance with the new companionship exemption regulations? Is the agency targeting government agencies, private sector agencies, registries, families or all of them?

   Response: Given the scope of the agency's responsibilities, the Wage and Hour Division is committed to a strategic approach to enforcement of all the laws we enforce, including the new protections for most home care workers. We prioritize enforcement efforts where the problems are greatest and where we can have the greatest impact on compliance. Generally, we have shifted our approach from one that focused on single establishments and resolving complaints to one that proactively seeks to improve compliance across industries, employers, and establishments for the greatest numbers of workers. Our enforcement of the Home Care Final Rule is consistent with this approach.

OSHA Recordkeeping

1. Your testimony discussed the Occupational Safety and Health Administration's (OSHA) new Rapid Response Investigations (RRI) that are triggered by reporting requirements OSHA instituted in January 2015. Employers are required to report an injury within 24 hours and a fatality within eight hours. The Department's budget asked for over $6 million in enforcement funding to support this effort. Can you provide the number of accidents prevented through this initiative?

   Response: Estimating the number of accidents prevented by RRI, would require nationwide controlled experiment, which OSHA doesn't have the mandate or funding to conduct. One of the central purposes of RRIs, however, is to prevent future injuries. This is done by encouraging employers to conduct their own incident investigations and develop remedies to workplace hazards. OSHA provides guidance materials and consultation, but does not conduct a formal investigation in most cases. OSHA believes that this cooperative approach fosters greater commitment by employers to prevent the kinds of severe injuries to which the new reporting requirements are addressed. In the

first full year of the reporting program, employers notified Federal OSHA of 10,388 incidents involving severe work-related injuries, including 7,636 hospitalizations and 2,644 amputations. OSHA responded to 62 percent of these reports through RRIs, while it determined that formal investigations were warranted for about a third of them. Through the RRI and inspection process many of the hazards that led to these severe injuries were identified and abated. Removal of known hazards is the keystone to preventing similar injuries from recurring. We are confident that the interventions triggered by these reports have improved overall workplace safety. As indicated in OSHA's report, Year One of OSHA's Severe Injury Reporting Program - An Evaluation, most of the hazards that led to these severe injuries are well-understood and easily prevented. They also account for a majority of work-related fatal injuries. And we know that, in most cases, employers can abate them in straightforward, cost-effective ways, such as by providing fall protection equipment, installing guarding over dangerous machinery, or clearly marking pathways.

Working with OSHA, many employers have found ways to eliminate hazards and protect other workers from the same injuries. Nothing illustrates this more powerfully than actual cases, workers injured in incidents that OSHA learned about because of the new reporting program:

In Chicago, a conveyor loaded with liquid chocolate suddenly started up as a worker was cleaning a roller. Her arm was pulled in and mangled so badly that its repair required a plate and skin grafting. To prevent future injuries, the employer installed metal guards to shield workers' arms and hands from moving machinery as well as warning alarms and flashing lights that are activated 20 seconds before the conveyor moves. In Idaho, a valve cover snapped shut on the hand of a truck driver who was loading creamer into a tanker, severing his fingertip. Drivers had long known the valve was problematic. After the amputation, the employer devised a new hands-free tool for closing the valve, and alerted the manufacturer and other employers likely to use the same equipment.

At a wastewater treatment facility in Illinois, a worker was overcome with heat exhaustion and hospitalized. The employer immediately instituted more frequent employee breaks with water provided and within weeks had installed cooling fans and submitted plans for a new ventilation system to control worker exposure to excessive heat.

When a mechanized blender at a meat processing plant in Missouri suddenly started up, it caused the amputation of both lower arms of a sanitation worker who was cleaning the machine. The employer immediately re-engineered the blender's computer control system and changed safety interlocks, and enhanced worker training and supervision, significantly reducing the risk of amputation. Thankfully, the worker's arms were later surgically reattached and he is undergoing rehabilitation.

2. In your testimony, you highlighted the RRI process OSHA inspectors may undertake after an injury or fatality is reported. Explain how stakeholders were able to comment on this RRI during the recordkeeping comment period.

Response: On June 22, 2011 OSHA published a Notice of Proposed Rulemaking (NPRM) to modify its current fatality and catastrophe reporting requirements (76 FR 36414-36438). The NPRM described the specific types of injuries that should be reported and how they should be reported, but did not discuss how the Agency would respond to the information received. OSHA received multiple comments expressing concern that the Agency did not have enough resources to be able to use the additional data from the new reporting requirements. In the final rule OSHA acknowledged it did not have the resources to inspect all reported injuries, and indicated it would use other investigative tools to complements its inspection capabilities (79 FR 56153-56154). OSHA developed the RRI process outlined above to fulfill that commitment. The RRI is an internal OSHA resource-allocation and enforcement priority policy, so notice and comment was not necessary before OSHA adopted it.

Mine Safety

1. The Mine Safety and Health Administration's (MSHA) budget allocates a 5 percent funding increase for coal enforcement and 3 percent funding increase for metal/non-metal enforcement. As your testimony indicates, metal/non-metal mines experienced a significantly higher fatality rate last year. Why does MSHA continue to emphasize coal enforcement when the number of operating coal mines decreased by 26 percent last year?

   Response: MSHA emphasizes both coal and metal/non-metal enforcement. MSHA also recognizes that coal mining has steadily declined, and MSHA has taken several steps to realign its coal enforcement resources to reflect declining market conditions. MSHA merged Coal District 1 in central Pennsylvania into District 2 in western Pennsylvania in 2014. On October 1, 2016, MSHA closed the District 6 office, which had jurisdiction over mines in eastern Kentucky, transferring those responsibilities to Districts 5 and 7. That said, MSHA also needs to retain sufficient enforcement staff to respond to changes in the mining industry, particularly since it takes 18 months to two years to train new inspectors.

   MSHA is also redirecting coal resources to other programs (Educational Policy and Development, Technical Support, Program Evaluation and Information Resources, and Administration and Management) where additional resources are needed. In addition, during FY 2015 and FY 2016, Coal Mine Safety and Health (CMSH) enforcement personnel supported Metal and Nonmetal Mine Safety and Health (MNMSH) to achieve its statutory mandated inspections and provide assistance with the highly successful initiatives to reverse the increase in mining deaths from 38 in FY 2015 to an historic low of 24 deaths in FY 2016. CMSH supported the rollout of safety initiatives in metal and nonmetal mines such as MSHA's "Rules to Live By" that highlights the mining conditions most likely to claim a miner's life and "walk and talks" to raise awareness about the root cause of fatalities and the best practices to prevent them. MSHA has also directed CMSH enforcement personnel to provide additional compliance assistance to coal mine operators using "walk and talks" to raise safety awareness. With the passage of the Fixing America's Surface Transportation Act (known as the FAST Act) on December 3, 2015, aggregate industry officials have advised MSHA that they anticipate

an increase in production and industry employment in MNM mines starting in 2016 that will increase as transportation projects are funded. MNMSH resources will be needed to provide compliance assistance to mine operators and complete mandated inspections.

Blacklisting

1. The Fair Pay and Safe Workplaces, or "blacklisting," Executive Order sets the dangerous precedent that employers are guilty until proven innocent. For example, an Equal Employment Opportunity Commission (EEOC) letter of determination or a complaint issued by a National Labor Relations Board Regional Director must be disclosed by an employer under the Executive Order. An employer can be denied a federal contract even though such a letter or complaint represents *allegation* of wrongdoing and *not a final determination* of wrongdoing reached after a fair, impartial adjudication process. Why are such non-final determinations being reported *before* employers have the opportunity to fully litigate the matters? How is this premature reporting not going to be viewed as an automatic strike against the employer during the bidding process?

   Response: As you may know, on October 24, 2016, a federal district court judge in Texas issued a preliminary injunction to prevent certain sections, provisions, and clauses of the rule from taking effect while the lawsuit is pending. Specifically, the Court preliminarily enjoined implementation of "any portion of the FAR Rule or DOL Guidance relating to the new reporting and disclosure requirements regarding labor law violations as described in Executive Order 13673 and implemented in the FAR Rule and DOL Guidance." The Department remains of the view that the Rule and Guidance are legally sound, and the Department of Justice is considering options for next steps.

   Administrative merits determinations are the products of expert government investigators doing extensive fact finding and exercising informed judgment that a violation of the law has taken place. The complaints issued by enforcement agencies that are included in the definition of "administrative merits determination" are not akin to complaints filed by private parties to initiate lawsuits in federal or state courts. Each complaint included in the definition represents a finding by an enforcement agency—following a full investigation—that a labor law was violated.

   In contrast, a complaint filed by a private party in a federal or state court represents allegations made by that plaintiff and not an enforcement agency; such complaints are not administrative merits determinations. Similarly, employee complaints made to enforcement agencies (such as a complaint for failure to pay overtime wages filed with the DOL's Wage and Hour Division or a charge of discrimination filed with the Equal Employment Opportunity Commission) are not administrative merits determinations.

   As noted in the DOL guidance, to the extent a civil judgment, administrative merits determination, or arbitral award or decision is not final, it should be given lesser weight by the contracting officer in making a responsibility determination. The prospective contractor will also have the opportunity to provide additional information as it deems necessary to demonstrate its responsibility, such as mitigating circumstances, remedial

measures, and other steps taken to achieve compliance with the relevant labor laws. The DOL guidance provides direction on weighing violations, including taking into account good faith efforts to remedy past violations, internal processes for expeditiously and fairly addressing reports of violations, and/or plans to proactively prevent future violations.

2. The President's blacklisting Executive Order will have a substantial impact on the federal procurement process and dissuade certain prime contractors from using a variety of small business subcontractors. What is the Department's position on the loss of small business contractors and the overall reporting burden imposed on employers looking to compete for federal contracts resulting from this Executive Order?

   Response: The EO exempts contracts valued at, or less than, $500,000 and subcontracts for commercial-off-the-shelf products. Most small businesses fall under these exemptions.

   The final FAR rule was designed to phase in several of the EO's requirements in order to lessen the immediate impact on small businesses. Specifically:

   - For the first six months following the effective date of the FAR rule, only prime contractors under consideration for contracts with a total contract value equal to or greater than $50 million would be required to disclose decisions regarding labor law violations;
   - For the second six months following the effective date of the FAR rule, only prime contractors under consideration for contracts with a total contract value equal to or greater than $500,000 would be subject to the disclosure requirements – no subcontractors will be subject to the disclosure requirements during this timeframe; and,
   - Subcontractors would not be required to begin making disclosures until October 25, 2017 - one year after the FAR rule's effective date.

   Finally, consistent with existing law, if a contracting officer makes a determination of non-responsibility involving a small business, the offeror must be given the opportunity to apply to the SBA for a "certificate of competency." This would override the responsibility decision made by the contracting officer.

   As noted in the previous response, on October 24, 2016, a federal district court judge in Texas issued a preliminary injunction to prevent certain sections, provisions, and clauses of the rule from taking effect while the lawsuit is pending. Once it takes effect, the EO's requirements will help many small business contractors – the vast majority of whom do not violate labor laws – by leveling the playing field so they do not have to compete against contractors who put in lower offers by cutting corners on workers' pay and safety.

3. The Executive Order ignores the current suspension and debarment process that already fairly and objectively excludes from federal contracting employers who violate employee rights and protections. As the 2015 proposed guidance is finalized, what protections are

in place to ensure that those businesses with a history of complying with the law are not caught up in an unworkable and unnecessary regulatory scheme?

Response: Suspension and debarment procedures play an important role in the procurement process. They serve to exclude from the federal contracting process those contractors whose record is so poor that it serves the public interest to preclude them completely from receiving additional contracts. The processes and tools DOL and the FAR Council established under the Fair Pay and Safe Workplaces EO are designed to help in identifying and addressing labor violations *before* they require consideration of suspension and debarment. The purpose of the Order is to increase efficiency in contracting by encouraging compliance during contract performance, not to increase the use of suspension and debarment.

In implementing the Executive Order, DOL and the FAR Council have made every effort to streamline the disclosure process and minimize the burden on contractors. The processes set forth in the final guidance and regulations build on the existing federal acquisition system with which contractors are familiar. And given that most contractors follow the law, they will only need to attest that they are meeting their responsibilities. Moreover, contracting officers will focus on the most egregious violations; for those contractors with such egregious violations, DOL and the enforcement agencies will work with them to try to address any issues that can be remedied to bring them into compliance. And the final regulations will be phased in, so contractors have more time to fully understand their responsibilities.

Federal Employees' Compensation Act

1. The *Federal Employees' Compensation Act* (FECA) program's "chargeback system" is structured in a way that assumes both the Department and the employing agencies are doing their part in ensuring workers' compensation payments are free of fraud and abuse. This structure provides the Department authority over an agency's annual chargeback bill.

   To this end, the U.S. Postal Service Inspector General (USPS IG) has sent to the Department numerous cases suspected of being fraudulent, but the Department has failed to take action. In fact, several of the Department's Office of Workers' Compensation Programs district offices — including Washington, D.C., Denver, Seattle, and Jacksonville — have reportedly been difficult to work with according to the USPS IG. The USPS is bringing cases potentially involving fraud to the Department's attention and yet no action has been taken. Please explain the Department's reasoning for not taking action on these cases.

   Response: The Office of Workers' Compensation Programs (OWCP) is supportive of all efforts to combat fraud and abuse in the federal workers' compensation program. OWCP has well-established procedures in place with the Department of Labor Office of Inspector General (DOL OIG) for the referral of potential fraud cases to the DOL OIG as well as to an agency IG, such as the USPS IG, and for the support of those investigations

undertaken by the IG. OWCP has designated liaisons in each District Office to work directly with the IG and the OWCP Division of Federal Employees' Compensation (DFEC) has a fraud coordinator for all IG liaisons who is located in the Jacksonville District Office. The fraud coordinator communicates with the DOL OIG and USPS IG on a constant basis, as does staff here in Washington, DC. Moreover, OWCP meets with the USPS IG three to four times a year (generally in conjunction with DOL OIG) to discuss any outstanding issues or concerns they may have. USPS IG has not raised this issue of non-cooperation as an agenda item. Nevertheless, if USPS IG experiences a situation where a particular office has been difficult to work with or has not taken action, we would invite them to contact OWCP leadership or to share specifics with OWCP as an agenda item during our regular meetings so that we can look into the case and follow up with the District Office in question.

The coordination with the IG is for both medical provider and claimant fraud. In medical provider cases, OWCP continues to work with the IG during their investigation, providing data and program expertise when requested and may provide an OWCP witness at trial in the event of an indictment that leads to trial. However, should an employing agency IG (such as the USPS IG) refer a case to OWCP due to potential fraud, it would typically also be brought to the attention of the DOL OIG (the DOL OIG has joint investigations underway with USPS IG that involve suspected fraud). In cases of potential fraud or abuse involving FECA claimants (such as unreported employment or when a claimant's physical activities exceed their stated medical restrictions) we support criminal prosecution. When prosecution is declined, as sometimes occurs, we have developed administrative procedures to address such cases by undertaking further medical development. In a case where a claimant has knowingly failed to report employment earnings, the FECA statute provides that a claimant forfeits the right to compensation for the period covered by the report. And finally, a FECA claimant who is criminally convicted of FECA fraud in state or federal court forfeits all benefits that the individual would otherwise be entitled to.

It should also be noted that over 50 percent of OWCP's bill processing development resources are utilized to respond to requests made by the USPS IG in support of their investigations. OWCP continues to explore procedures to allow for additional review of improprieties by medical providers and greater coordination with DOL OIG.

Equal Employment Data Collection

1. Your testimony notes that the EEOC has proposed collecting pay data from employers. EEOC and the Department's Office of Federal Contract Compliance Programs would use this data to try to combat pay discrimination. However, serious questions have been raised about the utility of the data in combating discrimination. The job categories are very broad, and the data will not take into account experience, education, or skill level. Moreover, the pay data mandate will significantly increase compliance costs for employers in order to report information of questionable use. In addition, EEOC's proposal does not provide much in the way of assurances that the reported data will

remain confidential. Given these concerns, will you recommend that EEOC reconsider moving forward with its flawed pay data proposal?

Response: On September 29, EEOC announced that starting in March 2018, it will collect summary pay data from employers, including federal contractors and subcontractors, with 100 or more employees, through the Employer Information Report (EEO-1), a longstanding joint information collection of EEOC and the Office of Federal Contract Compliance Programs (OFCCP).

The summary data collected from these employers will assist both agencies in identifying possible pay discrimination and will assist employers in promoting equal pay in their workplaces.

- The existence of a disparity in the submitted summary data, alone, would not constitute a violation of civil rights laws.
- The summary pay data collected using the modified EEO-1 would be one of several sources of information the agencies would consider when determining whether a pay disparity warrants a closer examination.
- Experience, education, and skill level are among the factors that the agencies would consider if a compliance evaluation or an investigation were to be initiated after analyzing the summary pay data.

EEOC has been thoughtful in its proposal and in responding to the comments it received.

- **Cost/Burden**: Among the changes proposed in response to comments is the alignment of the EEO-1 with federal obligations to calculate and report W-2 earnings as of December 31st to reduce the burden on employers for gathering the pay data. The EEOC also increased its burden estimates in light of time and pay rates for the wide range of employees involved in preparing and filing the EEO-1.

- **Confidentiality**: Title VII has strict confidentiality standards, and their violation subjects EEOC officers and staff to criminal sanctions. After the 90-day right to sue period, the EEOC does not release the employer's EEO-1 report unless the charging party provides a FOIA request for the EEO-1 along with a filed, court-stamped legal complaint under Title VII showing that he or she is a party to that particular lawsuit. See 42 U.S.C. 2000e-7(e). The EEOC also takes extensive measures to protect the integrity of the EEO-1 data and consistently reviews and updates its security protocols. The EEOC only publishes large-scale aggregated EEO-1 data in a manner that fully protects employer confidentiality and employee privacy.

  OFCCP also provides contractors with a number of confidentiality protections:

  - OFCCP's procedures provide that it will notify contractors of any FOIA request for their EEO-1 data, including summary pay and hours-worked data. OFCCP will not disclose the data if a contractor objects to the disclosure and

OFCCP determines that the contractor has a valid basis for the objection. OFCCP protects the confidentiality of contractor EEO-1 data, including pay and hours-worked data, to the maximum extent possible consistent with FOIA.

- OFCCP will receive pay data *only* for federal contractors and subcontractors subject to Executive Order 11246.

Temporary Foreign Workers

1. For several decades, the Department has typically processed H-2B labor certification applications within 30 days or less. Last year, the Department published new rules – without any public notice or comment – that dramatically altered the application process. Now, over a year later, significant portions of those regulations still have not been implemented, and the portions that have been implemented by the Department caused massive delays and backlogs that threatened to put several small companies out of business because they could obtain seasonal labor. Questions have been raised as to whether the Department's so-called "emergency processing" procedures reduced the delays. Has the backlog been cleared and returned to 30-day processing? How many additional staff were assigned to work on these cases in order to return to 30-day processing? What specific personnel or leadership changes were made within the Department to address the backlog and delays? Who in the Department was responsible for fixing the backlog and delays? As of today, how many certifying officers does the Department have approving H-2B applications?

   Response: On December 18, 2015, the Fiscal Year (FY) 2016 Omnibus Appropriations Act (Omnibus) was enacted and significantly changed the process for determining prevailing wages and issuing labor certifications. The Omnibus requirements took effect immediately, without any transition period or additional resources for the Department, and the operational impacts were significant. In order to implement legally required changes to program requirements, the Office of Foreign Labor Certification (OFLC) temporarily suspended processing of H-2B applications for 17 days to facilitate implementation of the new requirements of the law. OFLC requested and received Office of Management and Budget authorization for emergency processing of changes to application forms so that they complied with the new program requirements, and the agency issued emergency guidance to the stakeholder community so program users were aware of the changes. OFLC immediately resumed processing on January 5, 2016, and continues to implement all new program requirements contained in the Omnibus. Coinciding with that 17-day processing pause, the OFLC experienced more than a twofold increase in new H-2B application filings during a three-week period from December 26, 2016 to January 15, 2016, as compared to the same period last year. Also, for several weeks in January 2016 technical problems with the electronic filing system, which have since stabilized, impacted the timely processing of pending applications.

   The Department took prompt action reducing the number of pending cases as quickly as possible and eliminated the H-2B backlog by May 2016. Although we increased staff

resources prior to our typical seasonal filing increase, the unexpectedly high volume of new H-2B applications in late December to mid-January far exceeded the OFLC's processing capacity. Therefore, we reallocated additional staff (three additional) and increased staff overtime hours. There are now two supervisors, 10 Immigration Program Analysts, and 16 contractor staff responsible for processing/deciding H-2B applications.

Additionally, OFLC implemented several administrative flexibilities designed to reduce processing times, which contributed to eliminating the H-2B backlog. Under these procedures, employers experiencing significant delays were able to request emergency processing via email, which allowed them to conduct recruitment of U.S. workers on an expedited basis, without filing a new application. That administrative flexibility saved them about 8-10 days of processing time.

We are sensitive to the impact such processing delays have on seasonal businesses and continue to explore additional administrative flexibilities that can improve service delivery for the upcoming season. For example, in advance of the upcoming Peak Season, using the limited existing resources, OFLC is cross-training staff across processing centers to provide additional capacity to reduce processing delays.

However, as we expect the demand for temporary worker programs to continue to increase, particularly in light of Congressional enactment of the returning worker exemption to the statutory cap on H-2B visas, the Department is eager to work with Congress to secure additional resources for the program, including needed additional processing staff, as part of a more comprehensive solution to addressing processing delays. Accordingly, one of the President's FY 2017 budget proposals would authorize legislation allowing the Department to establish and retain fees to cover the costs of operating the foreign labor certification programs, just as the Department of Homeland Security does for processing visa requests. These fees would help the Department improve the speed and quality of certification processing. The Department's inability to charge a fee to support more efficient application processing and program administration hurts businesses, workers, and America's economy. A market-based structure would connect the supply of the resources available for application processing directly with employer demand for those services, and ensure our programs can respond effectively to changes in application volumes.

2. The Department requires as part of the H-2B application process that the employer first obtain from the Department a prevailing wage applicable to the job. Until this year, this process routinely took two weeks. According to stakeholders, this process routinely took 60 or 70 days this spring, which then further delayed the application process. However, the prevailing wage data for all of these jobs is publicly available at the Foreign Labor Certification Data Center website, which is developed and maintained under a contract with the Department's Office of Foreign Labor Certification. Before they even file their request for a wage with the Department, employers can look up the wage themselves on this website in less than five minutes. Yet, the Department's April 2015 rules dictate that an employer cannot start any other part of the H-2B application process until the Department provides the wage. Has the Department returned to processing these wage

requests within a two-week timeframe? Who in the Department was specifically responsible for fixing these delays in the prevailing wage determination process? How many people in the Department are responsible for the final sign-off and approval of a prevailing wage determination?

Response: The Department diligently monitors the processing times for prevailing wage determinations (PWDs) so that all requests are processed as expeditiously as possible, while also seeking to balance processing times for non-H-2B requests. As of August 2016, the average processing time for a prevailing wage request is 29 days. Actual time for each application varies depending on the specifics of the wage request, especially if a survey is the basis of that request. Determination times also may fluctuate because of the unpredictability in volume of the number of applications each season.

In April 2015, the Department included a statement in the preamble to the H-2B regulations encouraging employers to file the ETA Form 9141 Application for Prevailing Wage Determination about 60 calendar days before the date that PWD is needed, to account for the new regulatory timetable for submitting the H-2B application. The National Prevailing Wage Center (NPWC) conducted extensive outreach to educate stakeholders, program users, and other interested members of the public on the regulatory changes to the H-2B program. We continue to encourage requestors to submit their ETA Forms 9141 at least 60 days in advance of the date on which the employer wants to file an H-2B application with the OFLC Chicago National Processing Center.

Currently, there are 17 contractor staff involved in the evaluation of prevailing wage requests and 15 Federal analysts responsible for issuing final determinations for prevailing wage requests across four visa categories: PERM, H-1B, H-2B and most recently, for H-2A wage survey requests. Additionally, there are three Federal team leads and three Federal supervisors responsible for providing input and assistance to the 15 Federal analysts in issuing prevailing wage determinations.

3. For employers filing H-2B applications with the same job category, season after season, year after year, would the Department consider amending its procedures to allow employers to simply look up the prevailing wage from the Foreign Labor Certification Data Center website, print a copy of the webpage for their records, and then move on to the next part of the application process?

   Response: We will consider any proposal that would assist OFLC in timely processing applications for all of its programs. However, this proposal as currently described does not permit OFLC to compare the employer's job description to confirm that a new request for a prevailing wage determination contains the same job description as did the prior prevailing wage determination, which is necessary to be certain that an employer should receive the same prevailing wage determination as it had in the past. Furthermore, even if the employer were to find the correct prevailing wage, this information would need to be verified by OFLC staff.

4. As the Department acknowledged, the timely processing this spring of employer requests for labor certifications under the H-2B program did not happen. Due to this troubling administrative failure, close to 80 percent of employers trying to avail themselves of a seasonal, legal workforce did not obtain needed workers by the date of need. In April 2015, the Department adopted regulations that compressed its ability to process H-2B certification requests within 30 days, while also requiring a certifying officer to independently verify the information in each request rather than relying on an audit process to identify any problems. It should have been no surprise that reducing processing time for requests while simultaneously increasing the level of scrutiny each request receives would lead to significant delay in processing, regardless of an increase or decrease in requests received. Indeed, the impacted employers warned the Department of this problem in hundreds of comments submitted when the regulations were first proposed.

   The rationale provided for changing the timeline for processing was the Department believed a higher percentage of U.S. workers in the lower-skilled categories would be more likely to apply for a job advertised three months ahead of time versus a job advertised four months ahead. Please provide the number of U.S. workers who responded to advertisements in the 12-month period prior to the April 2015 regulations and the number of U.S. workers who have responded to advertisements since the adoption of the new regulations.

   How many employers have been found to be violating the wages and recruitment requirements by certifying officers in the actual certification process since the adoption of the April 2015 regulations? In comparison, how many employers have been found by an audit process to be in violation of the wages and recruitment requirements in the year prior to the adoption of the April 2015 regulations?

   Response: For the 12-month period prior to the April 29, 2015, Interim Final Rule (IFR), 28,620 U.S. workers responded to advertisements for 133,001 positions. For the 12-month period after April 29, 2015, the Department is not able to provide comprehensive aggregate data on U.S. workers who responded to advertisements. Because the 2015 H-2B IFR requires employers to continue to consider for hire U.S. applicants after a certification is issued until 21 days before the start date of work, the initial recruitment report submitted by employers to the Department does not capture the total U.S. workers who responded to advertising the job opportunity. Employers are required to retain information about these additional U.S. workers who responded to the advertisements in their compliance file, but under the FY16 Consolidated Appropriations Act, the Department is prohibited from expending funds to conduct audit examinations which would have permitted evaluation of employers' recruitment efforts.

   It is an uncommon occurrence for OFLC to deny a labor certification because the employer has failed to properly recruit for U.S. workers or failed to state the proper wage during recruitment. Unlike the 2008 Final Rule, the current IFR now requires employers to begin recruitment for U.S. workers only after the wage and working conditions offered in the employer's recruitment for the job opportunity have been reviewed and determined

to be compliant with regulatory requirements. For the year prior to the adoption of the 2015 IFR, the Department completed 549 audit examinations of H-2B temporary labor certifications. We found that more than 68 percent of employers were not compliant with one or more requirements of the 2008 Final Rule and another seven percent were placed into supervised recruitment due to violations of program requirements.

5. Since the beginning of the year, there have been significant delays in processing of petitions under both the H-2B and H-2A programs. At one point after January 1, 2016, only one out of more than 50 H-2A petitions had been processed in the statutory timelines the Department must follow. What caused the delays in H-2A processing? What did the Department do to resolve these delays? What needs to be done to ensure H-2A employers do not face such delays in the future?

   Response: The overall volume of H-2A applications increased from last year. As of June 25, 2016, employer use of the program during FY 2016 increased by more than 15 percent compared to the same time period in FY 2015. The Department has not received any corresponding increase in resources to cope with the additional volume; plus, the modest fees collected along with H-2A applications are remitted to the Treasury and are not retained by the Department to improve processing.

   Because the same OFLC processing centers are responsible for processing H-2B and H-2A labor certifications and H-2B prevailing wages, timely processing was impacted by the enactment of the FY 2016 Consolidated Appropriations Act (Omnibus). The percent of complete H-2A applications processed on time dropped to 85 percent for the month of February 2016; however, OFLC dedicated resources to recover quickly and was back to processing 92 percent of complete applications on time by the end of April 2016.

   Importantly, one of the most common reasons for delays in processing H-2A applications is that employer—or in many cases the employer's retained agent or labor recruiter—does not submit a complete application that includes key documentation for the Department to make its determination and issue a timely labor certification. For FY 2016, 41 percent of all H-2A applications issued final determinations were initially submitted to the Chicago National Processing Center without required documentation, including, for instance, proof of required workers' compensation coverage for the entire period of need, documentation establishing the sufficiency and availability of housing for workers, the recruitment report, or other required licenses or information pertaining to the use of farm labor contractors. Timely processing is impaired by employer delays in the submission of the missing documents.

   The Department has taken a number of steps to assist users in filing timely and complete applications. We routinely conduct stakeholder outreach and provide technical assistance in an effort to reduce application errors. We established an electronic filing system to facilitate the processing of applications, and are pleased that nearly 80 percent of H-2A employers chose to file their applications electronically during FY 2016. The use of the electronic filing system has allowed OFLC to communicate more efficiently with employers using e-mail when there are concerns or deficiencies. In addition, on May 18,

2016, we announced on the OFLC Website (www.foreignlaborcert.doleta.gov) a procedural change eliminating the "wet signature" requirement on certified H-2A applications, which we anticipate will save employers time and money filing their visa petitions with the USCIS. This change saves employers and their agents or attorneys from mailing each other paper forms to sign them a second time - which was effectively required under the prior form.

Lastly, several years ago and within its statutory authority, the Department implemented a flexible process to provide employers who filed incomplete applications with additional time to submit documents necessary to meet program requirements, so that they would receive certification, rather than a denial. This process improvement was initiated in response to concerns raised by the agricultural community about the Department's denial determinations at the 30-day statutory deadline without giving employers additional time to submit required documentation or, where applicable, to permit the State Workforce Agency (SWA) to complete the required housing inspection. While this flexibility benefits applicants, each time the Department allows that additional time to applicants to supply the necessary information beyond the 30 days, it does increase the processing time.

Because we expect the demand for temporary worker programs to continue to increase, the Department is eager to work with Congress on a comprehensive solution to address processing delays. Therefore, we strongly encourage you and your colleagues to work with the Administration and support the President's FY 2017 Budget Request for a fee-based funding structure similar to that used by DHS for foreign labor visa programs.

State Workers' Compensation Opt-Out Laws

1. States across the country have been exploring workers' compensation "opt-out" laws that give employers the flexibility to create their own private plans to compensate workers for injuries sustained on the job, in lieu of state workers' compensation laws. You recently announced the Department will undertake a report about opt-out alternatives to state-regulated workers' compensation and cutbacks in state workers' compensation benefits. Please provide details about this report and the increased attention the Department is giving to these opt-out laws. To date, what action has the Department taken in regard to monitoring such laws?

   Response: The Department of Labor commissioned a report on the history of and recent trends in state workers' compensation systems in the United States. The report, released on October 5th, provides a history of state workers' compensation laws, including the past role of the federal government, and then considers trends in the last 25 years, particularly the increasing inadequacy of benefits, restrictions on medical care for injured workers, new procedural processes and hurdles for claimants, and the effect these trends have had on Social Security Disability Insurance. In addition, the Department of Labor's Employee Benefits Security Administration is currently investigating opt-out alternative plans and their compliance with the Employee Retirement Income Security Act of 1974 (ERISA).

Rep. Wilson (SC)

Energy Employees Occupational Illness Compensation Program

1. South Carolina's Second Congressional District is home to a large number of former energy employees from the Savannah River site located in Aiken, South Carolina. We have all seen reports highlighting the problems with the Energy Employees Occupational Illness Compensation Program. According to the Department's Office of the Ombudsman's 2014 Annual Report to Congress, only 60 percent of the total cases are from unique individuals, indicating that a large number of people are submitting multiple claims. I have heard reports from constituents that some people have approved claims from one illness, but they have to go through the same difficult process if they develop complications due to their treatment or another covered disease. It seems that this program burdens applicants with excessive paperwork and a complicated claims process.

   Do you believe that the Energy Employees Occupational Illness Compensation Program functions as it was intended and is able to meet the needs of those who rely on the program for medical care?

   Response: It is important to understand the distinction between a "case" and a "unique individual worker" in this context. The case count represents employees (living or deceased) whose employment and illness are the basis for the claim. These numbers include combined Part B & E applications. The Energy Employees Occupational Illness Compensation Program Act permits claimants to receive benefits under both Part B and Part E, up to a $400,000 combined cap. Since we report on the number of Part B cases and the number of Part E cases separately, the case count for combined B and E cases may have both Part B and E parts and thus are double counted. Cases do not represent new claims submitted on a case (like a claim for a new condition).

   Once a case is accepted, the Program does require that the claimant file a new claim if they develop a new condition. The reason for this is that under Part E, a condition for which an employee received a tort settlement or state workers' compensation may be subject to an offset or coordination. For that reason, there must be legal documentation that they have filed for a particular condition. However, the process for filing a claim for a condition that arose as a consequence of an accepted condition is simpler than filing an initial claim. Since employment (and/or survivorship) issues have already been adjudicated, the only issue to be determined is whether the new condition is related to an accepted condition. When there is supportive medical documentation, the District Office is able to issue a Letter Decision accepting the claim without the need to issue a Recommended and Final Decision, which is required for initial claims.

   On March 10, 2016, the Government Accountability Office issued a report to Congress regarding its study of the administration of the EEOICPA. They found that among their sample, approximately 90 percent of adjudicated claims were consistent with procedures and that in the remaining 10 percent, while there were some inconsistencies, those inconsistencies would likely not have affected adjudication outcomes. In addition, from

inception to date, the Program has paid $9.8 billion in monetary compensation and $3 billion in medical benefits. The Program regularly conducts outreach nationwide, partnering with the Department of Energy and the Department of Health & Human Services, to inform the public about the EEOICPA, intake new claims, and answer questions from current claimants. However, we are committed to making sure that the claims adjudication process operates effectively, and efficiently, and are always looking for ways to improve our administration of the EEOICPA program.

Apprenticeship Programs

1. Every year it seems the Department requests more money for the creation of a national apprenticeship program. I am grateful that South Carolina has been successful in creating world class apprenticeships through programs like Apprenticeship Carolina, Savannah River Site, and MTU America. While South Carolina has had this success, there remains nominal autonomy at the state level; states are required to use the Department's regulations as a baseline for their own. What you refer to as alignment, I would describe as coercion.

   Has the Department considered whether granting states greater autonomy in regulating the program could more-effectively promote participation?

   Response: The Department strongly believes that state leadership, innovation and flexibility are critical to expanding Registered Apprenticeship as a proven workforce strategy that works for businesses and jobseekers. States are an equal and important partner in the national Registered Apprenticeship system and we continue to look for opportunities and deploy resources to strengthen that partnership and provide greater flexibility for States to innovate.

   Our federal regulations provide a common framework and set of ground rules to provide consistency in the meaning and value of Registered Apprenticeship. That provides employers and apprentices with a consistent experience as they develop and operate Registered Apprenticeship programs. Today, businesses may develop apprenticeship training standards that work in every facility, in every state, for a wide variety of occupations. In 2008, the Department modernized its apprenticeship regulations to provide greater State flexibility, allowing states to choose a model that best addresses their needs to register and administer apprenticeship programs in their states (e.g., a federally operated, state operated or jointly operated state and Department of Labor (DOL) model).

   South Carolina is a prime example of productive federal-state cooperation. South Carolina chose not to establish its own State Apprenticeship Agency (SAA); rather, it chose to leverage DOL as the registration agency. This approach enabled the formation of an intermediary organization - Apprenticeship Carolina – to focus on direct engagement with the business community and work with individual employers to develop new apprenticeship programs, while DOL managed the formal registration process.

Some States chose to establish a SAA while others rely fully on DOL to oversee and register apprenticeship programs in the state. Regardless of the option a state selects, DOL strives to work cooperatively with state partners, such as Apprenticeship Carolina, to meet the unique circumstances of the state, its business community, and its workforce.

Blacklisting

1. We have continued to see the administration placing burdensome requirements on businesses, particularly those who contract with the federal government. The blacklisting Executive Order, issued in July 2014, outlines specific labor laws and Executive Orders that employers must comply with to be eligible for a federal contract. That Executive Order does not include all the administration's latest administrative mandates, like the paid leave requirements.

   Under the blacklisting Executive Order, should employers expect to report compliance with new executive-imposed requirements? Is there a limit on what employers will be required to report on under this Executive Order?

   Response: As you may know, on October 24, 2016, a federal district court judge in Texas issued a preliminary injunction to prevent certain sections, provisions, and clauses of the rule from taking effect while the lawsuit is pending. Specifically, the Court preliminarily enjoined implementation of "any portion of the FAR Rule or DOL Guidance relating to the new reporting and disclosure requirements regarding labor law violations as described in Executive Order 13673 and implemented in the FAR Rule and DOL Guidance." The Department remains of the view that the Rule and Guidance are legally sound, and the Department of Justice is considering options for next steps.

   Once the Fair Pay and Safe Workplaces Executive Order takes effect, prospective contractors must disclose violations during the reporting period of 14 basic workplace protections, including those addressing wage and hour, safety and health, collective bargaining, family and medical leave, and civil rights protections. Specifically, the following federal laws and executive orders are covered:

   - the Fair Labor Standards Act;
   - the Occupational Safety and Health Act;
   - the Migrant and Seasonal Agricultural Workers Protection Act;
   - the National Labor Relations Act;
   - the Davis-Bacon Act;
   - the Service Contract Act;
   - Executive Order 11246 of September 24, 1965 (Equal Employment Opportunity);
   - Section 503 of the Rehabilitation Act of 1973;
   - the Vietnam Era Veterans' Readjustment Assistance Act;
   - the Family and Medical Leave Act;
   - Title VII of the Civil Rights Act of 1964;
   - the Americans with Disabilities Act of 1990;
   - the Age Discrimination in Employment Act of 1967; and

- Executive Order 13658 of February 12, 2014 (Establishing a Minimum Wage for Contractors).

While the Order also covers equivalent state laws, with the exception of occupational safety and health "State Plans" that have been formally approved by OSHA, equivalent state laws will not be covered in the current guidance and rule; they require a second notice-and comment rulemaking to implement. Any statute or EO not enumerated above is not covered by the EO.

2. The Office of Labor Compliance Advisors (OLCA) was specifically denied funding for implementation of the blacklisting Executive Order in last year's Omnibus Appropriations bill signed into law on December 18, 2015. In the bill's accompanying Managers' explanatory statement, it is clear no money should be used for the OLCA. As a result, the Department appears to have moved implementation efforts to the Wage and Hour Division, as evidenced in the FY 2017 congressional justification.

   How is DOL implementing the Executive Order given the loss of appropriations for the OLCA's operations, which would presumably be responsible for proposing, finalizing, and implementing all guidance?

   Response: The Administration is committed to effective implementation of the EO in accordance with all applicable statutes, and DOL is working with OMB and all federal agencies to fulfill its roles and responsibilities under the EO.

Rep. Foxx (NC)

Workforce Development

1. In my time here I have worked to ensure my constituents have the opportunity to develop in-demand skills and "earn while they learn" through all kinds of employer-led workforce development. This approach to workforce development is well-suited to many jobs and has proven effective for both employers and employees.

   For these reasons I am disappointed by the Department's dogmatic promotion of registered apprenticeships at the expense of other earn-and-learn models. The number of Americans participating in earn-and-learn apprenticeship-style programs not registered with the Department exceeds the number of Americans participating in the programs registered with the Department. I am deeply concerned the administration's promotion of the registered apprenticeship program is another attempt to pick winners and reward favorites. Has the Department considered how these proposed subsidies could disadvantage businesses which are justifiably uncomfortable working with the Department and their employees?

   Response: The Department recognizes the value of and promotes work-based learning in many forms, including On-the-Job Training (OJT), work experience, internships, and Registered Apprenticeship; and we applaud Congress for the emphasis placed upon

work-based learning in the Workforce Innovation and Opportunity Act (WIOA). Registered Apprenticeship programs have a clear track record of exemplary performance. Registered Apprenticeship has proven to be the gold-standard of work-based learning, with average earnings of $60,000 for completers and the highest entered employment and retention rates of any publicly funded workforce development strategy.[1]

Registration is the critical mechanism that ensures that training programs have sufficient quality and rigor to meet consistent national or state standards; and those standards drive the high program performance outcomes. This approach is similar to accreditation for educational programs, and is one of the reasons many educational institutions – over 250 community colleges across the U.S. – accept completion of Registered Apprenticeship programs for college credit. Registered Apprenticeship programs also receive automatic approval as a State Eligible Training Provider (ETP) under WIOA. Registration remains critical as DOL provides guidance, technical assistance, funding, and additional resources to support Registered Apprenticeship programs.

The Department does not intend to disadvantage any business, and is working to engage employers and industry in the value of Registered Apprenticeship for their talent development efforts. In particular, the Department has invested approximately $14.7 million (of the $90 million ApprenticeshipUSA funds appropriated in FY 2016) to support intermediaries to help employers, particularly small- and medium-size employers, scale apprenticeship programs and reach new populations.

Registered Apprenticeship is one of many work-based learning strategies that the Department, states, and local agencies make available to employers that want to develop high-quality education and training pathways. The Department's guidance makes clear that other work-based learning strategies such as OJT and work-experience are important strategies under WIOA. In WIOA, 20 percent of formula funding is available broadly for incumbent worker training. In competitive grants for public-private partnerships, hundreds of millions of dollars have been made available for training strategies such as aligning regional workforce development strategies; engaging employers in sector strategies; enhancing customer-centered design for training programs; and expanding access to fast-track "bootcamp" style courses for open jobs. As one example, earlier this year as a part of the TechHire grants, a $3.9 million grant went toward training and placing displaced youth and young adults in paid internships with participating employers from IBM to small businesses. Another $4 million grant went to prepare individuals with high-functioning autism spectrum disorders for success in the workplace, including on-the-job training.

Overall, while we consider Registered Apprenticeship to be the gold standard for on-the-job training based on the data and the evidence, it is far from the only training strategy that we support through WIOA, our competitive grants, and our mission.

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[1] Debbie Reed, et al., "An Effectiveness Assessment and Cost-Benefit Analysis of Registered Apprenticeship in 10 States,"Mathematica Policy Research (July 2012); "Workforce System Results," U.S. Department of Labor, quarter ending December 31, 2015.

Paid Leave Rulemaking

1. There are concerns that the paid leave rule for federal contractors is one more in a series of barriers to entry in the government market. In addition to this proposed rule, contractors have faced a number of new compliance obligations in recent years. These barriers, in many cases, have resulted in the government paying more for inferior products relative to what was available in the commercial market. As a result, contractors who can bring innovation and efficiency to the federal procurement market may be less inclined to sell to government agencies and incur the associated compliance expense and risk. How does the Department respond to such concerns?

   Response: In issuing the Executive Order, the President explained that providing access to paid sick leave will "improve efficiency and cost savings in the work performed by parties that contract with the Federal Government by ensuring that employees on those contracts can earn up to 7 days or more of paid sick leave annually, including paid leave allowing for family care. Providing access to paid sick leave will improve the health and performance of employees of Federal contractors and bring benefits packages at Federal contractors in line with model employers, ensuring that they remain competitive employers in the search for dedicated and talented employees. These savings and quality improvements will lead to improved economy and efficiency in Government procurement." In addition, the EO levels the playing field for employers who already provide paid sick leave for their employers and thereby may make them more inclined to contract with the federal government.

   The Final Rule's economic analysis identifies numerous economic and other benefits, as well as relatively modest costs, that can be expected as a result of the Executive Order. To ease compliance for contractors, we have built upon existing requirements wherever appropriate in order to minimize compliance costs and simplify the process. As noted above, we believe costs will be at least partially offset by benefits, and we do not expect the rulemaking to restrain bidders or stifle competition.

2. The proposed paid leave rule for federal contractors expressly states that it is not intended to excuse a contractor from providing more leave than contemplated by the rule if required by a collective bargaining agreement. However, the proposal does not state what should happen when a collective bargaining agreement provides sick leave or paid time off differently than required under the proposed rule. Collective bargaining agreements are generally the product of lengthy union negotiations where both parties are sophisticated and represented by counsel in reaching an "arms-length" agreement. In some instances, the parties may have agreed to provide less sick leave in exchange for greater wages or other benefits. Would the Department consider allowing the terms of a collective bargaining agreement for the accrual of sick leave – whether for more or less leave than proscribed by the rule – to be acceptable in lieu of the rule's requirements? If not, why not?

Response: The Department considered all comments it received from the public regarding the proposed rule, some of which suggested approaches similar to those identified in your question. After careful consideration of these comments, the Department included a new, temporary exclusion from the requirements of the Executive Order and the regulations for employees whose work is governed by certain collective bargaining agreements (CBAs). Specifically, the new provision, 29 CFR 13.4(f), provides that if a CBA ratified before September 30, 2016 applies to an employee's work performed on or in connection with a covered contract and provides the employee with at least 56 hours (or 7 days) of paid sick time (or paid time off that may be used, among other purposes, for reasons related to sickness or health care) each year, the requirements of the Executive Order and Final Rule do not apply to the employee until the earlier of the date the agreement terminates or January 1, 2020. This provision balances the importance of ensuring that the Executive Order applies to all employees entitled to its benefits promptly against the complications that could arise where an existing CBA provides for paid sick time in a manner that is similar to, but not sufficient to meet the requirements of, the paid sick leave provisions of the Final Rule. These complications are significant in circumstances involving CBAs because the agreement will limit a contractor's ability to unilaterally change the terms of the leave it requires to be provided.

Similarly, the new provision provides that if a CBA ratified before September 30, 2016, applies to an employee's work performed on or in connection with a covered contract and provides the employee with paid sick time (or paid time off that may be used, among other purposes, for reasons related to sickness or health care) each year, but the amount provided under the CBA is less than 56 hours (or 7 days, if the CBA refers to days rather than hours), the contractor must provide covered employees with the difference between 56 hours (or 7 days) and the amount provided under the existing CBA. For example, if a CBA ratified before September 30, 2016 applies to an employee's work performed on or in connection with a covered contract and provides the employee with 20 hours of paid sick time each year, the contractor, in order to avail itself of the 29 CFR 13.4(f) exemption, would be required under the Final Rule to allow the employee to accrue and use an additional 36 hours of paid sick time in that year, for a total of 56 hours. A contractor must provide such "top up" leave in a manner consistent with either the provisions of the Executive Order and Final Rule or the terms and conditions of its CBA. If a CBA does not provide any paid sick time (or paid time off that could be used for an unlimited or broader range of reasons than paid sick time, but including reasons related to being sick or seeking health care), a contractor will be responsible for full compliance with the Order and regulations pursuant to the effective date of the Final Rule and the definition of a "new contract."

3. The proposed paid leave rule requires employees to receive one hour of paid sick leave for every 30 hours worked "on or in connection with" a government contract. However, there are many instances in which it will be impossible or impracticable for contractors to account for the exact number of hours that an employee spends working "on or in connection with" a covered contract. Government contractors, particularly contractors providing commercial item products and services, often do not record employee time on a contract-by-contract basis, or their employees perform a mix of government contract and

non-government contract work. In such cases, what records could a company keep to distinguish between work done on government contracts versus commercial contracts? Is the only option for a company to give these employees the maximum 56 hours required by the rule?

In the situation above, would the Department allow a company to apply an average of the amount of covered work done by the company to these employees' time in order to determine the amount of sick leave that must accrue? For example, if, on average, 25 percent of a company's work is on covered contracts, could these employees accrue leave for 25 percent of the time worked each week?

Response: The Department notes as an initial matter that the Final Rule does not apply to contracts for the manufacturing or furnishing of materials, supplies, articles, or equipment to the Federal Government that are subject to the Walsh-Healey Public Contracts Act, 41 U.S.C. 6501 et seq.

With respect to contracts covered by the Final Rule, this question relates particularly to the provision that appeared in the proposed rule as 29 CFR 13.25(b); that provision addressed the segregation of employees' covered and non-covered work for a single contractor. The provision, which was included in the Final Rule as 29 CFR 13.25(b)(1), provides that if a contractor wishes to distinguish between an employee's covered and non-covered work (such as time spent performing work on or in connection with a covered contract versus time spent working on or in connection with a non-covered contract), the contractor must keep records reflecting these distinctions. It further provides that only if the contractor adequately segregates the time will time spent on non-covered contracts be excluded from hours worked counted toward accrual of paid sick leave, and that a contractor must likewise adequately segregate time to properly deny an employee's request to take leave on the ground that the employee was scheduled to perform non-covered work during the time she sought to use paid sick leave. This requirement that contractors who wish to distinguish between covered and non-covered time to keep adequate records reflecting that distinction is consistent with the treatment of hours worked on SCA and non-SCA covered contracts, as well as the treatment of covered versus non-covered time under the Minimum Wage Executive Order rulemaking.

The Department received comments to the proposed rule similar to the suggestions contained in your question, however, and in response to those comments, included in the Final Rule, in 29 CFR 13.5(a)(1)(i) and (iii), new provisions that allow contractors to estimate an employee's covered hours worked in connection with (but not on) covered contracts. Specifically, under those provisions, a contractor may estimate the portion of an employee's hours worked spent in connection with covered contracts provided the estimate is reasonable and based on verifiable information. The Final Rule explains that, as suggested by commenters, such information could include the portion of a contractor's total revenue that derives from covered contracts if it is reasonable to assume that an employee's work time is roughly evenly divided across all of the contractor's work. If, for example, a contractor derives half of its revenue from covered contracts, the contractor would likely have a reasonable basis for estimating that employees in the

mailroom of the contractor's corporate headquarters spend half of their hours worked in connection with covered contracts. The Final Rule further explains that an estimate of this type based on information other than a contractor's revenue could also be appropriate. For example, a contractor could estimate that a receptionist who handles incoming calls for a group of other employees who work on covered contracts during, on average, one third of their work time also spends one third of her hours worked in connection with covered contracts.

The Department made other adjustments to the Final Rule to take into account these new provisions. Specifically, 29 CFR 13.5(c)(1) provides that if a contractor estimates the amount of time an employee spends performing work in connection with covered contracts, the contractor must permit the employee to use her paid sick leave during any work time for the contractor. In addition, CFR 13.25(b)(2) provides that a contractor must keep records or other proof of the verifiable information on which estimates of this type are reasonably based.

Rep. Walberg (MI)

1. Under the Obama administration, MSHA tabled efforts to create a drug testing program for miners. Given MSHA's priority to keep miners safe, please explain why this effort was suspended when it could help to ensure miners are afforded the confidence to know the person working next to them is not impaired by drugs or alcohol?

   Response: MSHA withdrew the proposed rule due to commenters' concerns that the rulemaking would negatively impact mine operators' existing alcohol and drug programs, and conflict with state laws thus possibly resulting in a diminution of safety for miners. Both labor and industry stakeholders opposed MSHA's Alcohol- and Drug-Free Mines proposed rule on such grounds.

2. What policies has MSHA adopted to encourage drug and alcohol-free workplaces and what actions has MSHA taken to promote and reinforce the rights of employers to conduct drug testing?

   Response: MSHA is committed to ensuring that our nation's miners are able to work in environments that are safe and healthy. MSHA is also committed to a drug-free workplace for its employees. MSHA enforces existing standards that prohibit alcohol and drug use in or around metal and nonmetal mines, and prohibit persons under the influence of alcohol or drugs to be permitted on the job.

   Since 2005, several coal-producing states have taken the lead on ensuring that our nation's coal mines are alcohol- and drug-free workplaces. For example, the states of Kentucky and West Virginia have laws which require applicants for mining certifications pass alcohol and drug tests administered by the state before a certification will be issued; violation of these states' laws is the basis for decertification. Virginia and West Virginia require mine operators to implement a substance abuse program for all miners. Virginia requires, at a minimum, a pre-employment drug test. In addition, a number of mine

operators have voluntarily implemented drug-free workplace programs. MSHA applauds these efforts by states and mine operators to ensure that our nation's mines are safe.

MSHA will work cooperatively with state enforcement agencies and will continue to review mine accident investigation data to determine the extent to which the use of alcohol or drugs contributes to mine accidents, and consider options available to the Agency to address alcohol and drugs at all mines. MSHA will also continue to work on initiatives and rulemakings that improve mining conditions most likely to prevent injury, illness, and death in the nation's mines.

3. The Committee has received information suggesting that a MSHA inspector had been implicated in a scheme to sell synthetic urine in order to assist individuals in passing a drug test and that an investigation was underway. Is the agency aware of this or similar allegations, and, if so, please provide a description of any actions taken by MSHA to address these allegations, and please provide all relevant information, documents, and communications related to these allegations and the agency's responsive actions.

   Response: Yes, MSHA is aware of an allegation involving an inspector selling synthetic urine. The incident was investigated by the Department of Labor-Office of Inspector General (DOL-OIG). The inspector retired from federal employment on February 1, 2016 and the DOL-OIG concluded that because he was no longer employed, there was no potential administrative action against him regarding the matter. DOL-OIG referred the matter as an advisory to MSHA that the retired inspector's store would likely continue to sell synthetic urine to miners. MSHA has notified the appropriate State authorities of this issue.

Proposed Rule on Criteria and Procedures for Assessment of Civil Penalties

1. Does MSHA have any quantitative data, such as analyses of assessed penalties versus safety performance, either relating to individual mining operations or mining sectors, to show that a relationship exists between penalties and safety performance? If so, please provide a copy of such data and any report or study supporting the agency's proposal to increase and change assessments.

   Response: MSHA publishes a broad range of mine safety and health data on the agency's website (www.msha.gov/data-reports). These reports include data on MSHA's enforcement and assessment activities, along with the mining industry's safety and health performance for recent years. From these data it may be possible to analyze the relationship between penalties and safety performance at a particular mine or for a mining sector. However, while the proposed rule would simplify assessments and would re-weight the six statutory penalty criteria to focus more on negligence, gravity and history of violations, MSHA does not anticipate that the proposal would result in a general increase in assessments. MSHA's preliminary regulatory economic analysis can be found at https://www.gpo.gov/fdsys/pkg/FR-2015-02-10/pdf/2015-02399.pdf. Within the recent five-year period (2010 - 2015), the injury rate declined from 2.81 to 2.28, and the fatality rate declined from .0237 to .0096. During this same period, the total

number of citations and orders issued has declined by 36 percent and dollar amount assessed has decline by 62 percent. MSHA believes that these declines were due, in large part, to MSHA's focused enforcement efforts and improvement in mine operator compliance.

2. This proposed rule makes significant changes to the way in which inspectors assign point values to violations. What steps has MSHA taken to create guidance and training so inspectors apply these changes and assign points in a uniform manner? What steps has MSHA taken to make any such guidance or training available to the regulated community?

   Response: At this time, MSHA is considering comments and testimony. MSHA would give guidance and training to its inspectors before the inspectors would be expected to implement any final rule. MSHA also would meet with our stakeholders to provide guidance on the final rule.

3. Did MSHA contact industry stakeholders, including business and labor, in crafting the proposed rule before releasing it to the public? If so, which groups did the agency contact, and is there a report that provides information about the results of the interactions?

   Response: While MSHA did not meet with stakeholders specifically on the proposed rule prior to publishing it, MSHA engages in frequent outreach to stakeholders in the mining industry, including both mine operators and miners. This outreach often obtains stakeholders' concerns and views on MSHA's enforcement program. In addition, MSHA conducted four public hearings after publishing the proposed rule. The first two hearings were held on December 4, 2014, in Arlington, VA; and December 9, 2014, in Denver, Colorado. In response to stakeholder requests, MSHA conducted two additional public hearings on February 5, 2015 in Birmingham, Alabama; and on February 12, 2015, in Chicago, Illinois. MSHA also extended the comment period twice to allow sufficient time for stakeholders to review comments and testimony.

4. The regulated community has expressed the need for MSHA to conduct a 6-month test program that compares assessments under the existing Part 100 guidelines with assessments under the proposed guidelines. Does MSHA intend to conduct the pilot program that industry stakeholders requested, or does the Agency have a similar plan that will realistically assess how the rule will affect the regulated community before full implementation?

   Response: MSHA analyzed the impact of the proposed rule and compared assessments under the existing standards with assessments for the same violations under the proposed rule. MSHA found that under the proposal, total penalties proposed by MSHA and the distribution of the penalty amount by mine size would remain generally the same; however, the penalty amount for small M/NM mines would decrease. MSHA's preliminary regulatory economic analysis can be found at https://www.gpo.gov/fdsys/pkg/FR-2015-02-10/pdf/2015-02399.pdf.

MSHA has received a number of comments and heard testimony at the public hearings on stakeholder concerns about the proposed rule. MSHA is currently reviewing and considering stakeholders' comments.

Pattern of Violations Rule

1. In January 2013, MSHA finalized a rule revising its existing regulation for Pattern of Violations (POV). Beginning with the rule's effective date on March 25, 2013, please provide the Committee the following information:

    a. How many facilities have been placed in POV status?

    Response: Under Mine Act section 104, an operator is notified if a pattern of violations exists at a coal or other mine. Since March 25, 2013, five operators received POV notices involving five mines. (4 Coal, 1 Metal/Nonmetal). Since 2015, no operators received POV notices.

    b. How many facilities have filed Corrective Action Programs (CAPS)?

    Response: Since March 25, 2013, 31 operators (19 Coal, 12 Metal/Nonmetal) have filed Corrective Action Programs (CAPs) that have been approved by MSHA.

    c. How many of the CAP-facilities have reduced the significant and substantial (S&S) violation frequency rate by 50 percent, or reduced the S&S frequency rate to a level at or below the median S&S frequency rate for mines of a similar type?

    Response: Of the 31 approved CAPs, 26 contain goals that reduced the S&S violation frequency rate by 50 percent, or reduced the S&S frequency rate to a level at or below the median S&S frequency rate for mines of a similar type. Fourteen CAP operators met their goals, five have not met their goals, and seven have yet to reach their defined completion dates.

2. Since the effective date of the Final Rule, how many operators have identified mistakes in data which led to the facilities being placed in POV status? In addition please provide how many of these mistakes can be characterized as:

    a. Citations entered incorrectly?

    b. Citations not yet updated in MSHA's computer system?

    c. Decisions rendered by the Mine Safety and Health Review Commission, thus nullifying the citations?

d. Contested citations?

e. Citations issued in error to an operator instead of an independent contractor?

Response: As the preamble to the final POV rule notes, mine operators now have access to MSHA's on-line Monthly Monitoring Tool, which allows operators to review their compliance information on a monthly basis and bring to MSHA's attention any data discrepancies in the POV database as it is updated each month. See, 78 Fed. R. 5061. Additionally, MSHA provides mine operators an opportunity to meet with the District Manager for the purpose of discussing discrepancies in the data after MSHA conducts its POV screening. Mine operators have the opportunity to question the underlying data on which the POV is based and provide information to support their position. MSHA will make changes, as appropriate, which could result in the rescission of the POV notice if MSHA verifies the data discrepancies and the mine no longer meets the criteria for POV. See, 78 FR 5065-66. Since the effective date of the Final Rule, we are not aware of any discrepancies identified by mine operators in the data used during a POV screening. Under this highly successful program and MSHA outreach to operators, no mines have met the POV screening criteria since 2014.

Wellness Programs

1. As you know, employers sponsor wellness programs to improve the well-being of their workforce by incentivizing employees and their families to adopt healthy lifestyles. This reduces health care costs and increases productivity. One of the *Patient Protection and Affordable Care Act's* few bipartisan provisions encouraged and expanded these wellness programs. However, the EEOC continues to wage an aggressive attack on employer wellness programs. Last year, the EEOC issued proposed rules (finalized in May 2016) to amend regulations under the *Americans with Disabilities Act* and the *Genetic Information Nondiscrimination Act*, which have the effect of reducing the ability of employers to offer these programs. That's why I cosponsored H.R. 1189, the *Preserving Employee Wellness Programs Act*. The bill protects wellness programs from EEOC's counterproductive and burdensome requirements. Do you share our concerns that EEOC's proposed rules are counterproductive? Was the Department in contact with EEOC as it finalized the proposed rules?

   Response: The Department believes that the EEOC's enforcement of applicable laws safeguards workers, especially those with disabilities. Title I of the Americans with Disabilities Act (ADA) and Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), both of which are enforced by the EEOC, impose conditions on employers independent of the obligations imposed by the Health Insurance Portability and Accountability Act (HIPAA) and the Affordable Care Act (ACA).

   In particular, the ADA generally prohibits an employer from making disability-related inquiries or requiring medical examinations, subject to a statutory exception for

"voluntary" medical examinations and medical histories that are part of an employee health program.

Title II of GINA prohibits employers covered by the law from using genetic information in making decisions about employment. It also limits employers from acquiring and disclosing genetic information about applicants or employees, although some exceptions to the GINA Title II genetic information acquisition rule are permitted in voluntary wellness programs. Additional rules for genetic information, including additional proscriptions against acquisition of genetic information, may apply to wellness programs under GINA Title I.

The Department, together with the Departments of Treasury and Health and Human Services, consulted extensively with the EEOC during the drafting process for the proposed and final rules for wellness programs under the ADA Title I and GINA Title II. The EEOC has explained that it sought to promote consistency, to the extent possible, with the tri-Department rules, while also ensuring that such programs are voluntary and incentives are not so high as to become coercive and thus violate the ADA.

2. Private sector wellness programs benefit employees, their families, and employers. But, employers need flexibility in developing and administering these plans. The *Preserving Employee Wellness Programs Act* (H.R. 1189) improves current law to provide employers with certainty and flexibility in structuring their wellness programs. How is the Department ensuring that wellness programs flourish, so that health care costs are minimized for employer sponsored coverage and employees alike?

Response: The Department agrees that wellness programs provide important health benefits, and it remains committed to supporting workplace health promotion and disease prevention as a means to reduce the burden of chronic illness, improve health, and limit growth of health care costs, while ensuring that individuals are protected from unfair underwriting practices that could otherwise reduce benefits based on health status. Accordingly, the Departments of Labor, Treasury, and Health and Human Services have jointly issued regulations that explain how employers can design wellness programs that comply with the ACA rules prohibiting plans and insurance companies from discriminating against individuals on the basis of health status factors. The ACA and the Departments' regulations provide flexibility for employers by increasing a maximum reward permitted under the wellness regulations of HIPAA 1996 from 20 percent to 30 percent of the cost of health coverage. They also protect consumers by requiring that health-contingent wellness programs be reasonably designed to promote health or prevent disease and be available to all similarly situated individuals. Additionally, if an individual's medical condition makes it unreasonably difficult or medically inadvisable for the individual to meet a wellness program's specified health-related standard, the program must offer reasonable alternative means of qualifying for the reward.

The Department also supports the use of wellness programs by helping employers understand the rules. The Department conducts in-person health benefits laws compliance assistance seminars and national webcasts that include information on the

wellness program rules and provide the opportunity to ask questions. In addition, on October 19, 2016, the Department participated at the joint webcast hosted by EEOC to help employers understand their responsibilities under the Department's wellness rules and the EEOC wellness rules. The Department also has a compliance guide (available online and in print) that includes FAQs as well as a check sheet on the wellness program provisions and a separate page on the dedicated ACA web page providing easy links to the rules and related information. The web page provides links to several FAQs on wellness programs including an FAQ that specifically clarifies that the Departments will coordinate with other Departments, such as the EEOC, but a wellness program that complies with the Departments' wellness program regulations does not necessarily mean it complies with any other State or Federal law. Employers also can request assistance from our trained benefits advisors online or by calling toll-free.

Blacklisting

1. The Department issued guidance implementing the blacklisting Executive Order in May 2015. When can we expect that guidance to be finalized? What will be the effective date of that guidance?

   Response: The DOL guidance and FAR regulations implementing the Fair Pay and Safe Workplaces EO were published in the Federal Register on August 25, 2016. The regulations were scheduled to take effect on October 25, 2016; however, on October 24, 2016, a federal district court judge in Texas issued a preliminary injunction to prevent certain sections, provisions, and clauses of the rule from taking effect while the lawsuit is pending. Specifically, the Court preliminarily enjoined implementation of "any portion of the FAR Rule or DOL Guidance relating to the new reporting and disclosure requirements regarding labor law violations as described in Executive Order 13673 and implemented in the FAR Rule and DOL Guidance." The Department remains of the view that the Rule and Guidance are legally sound, and the Department of Justice is considering options for next steps.

   The Court Order does not enjoin implementation of those sections of, or the clause in, the FAR rule addressing the paycheck transparency requirements in the EO (i.e., section 5 of the EO 13673). This coverage will take effect for new solicitations issued on or after January 1, 2017, as stated in the final rule.

2. The proposed blacklisting guidance stated that additional guidance would be issued on equivalent state labor laws and subcontractor reporting requirements at a later date. What is the status of this follow-up guidance and will it be proposed for notice and comment? Given the breadth of this secondary guidance, shouldn't that information be proposed before finalizing the May 2015 guidance, especially in light of the burdensome compliance requirements and the need to implement new reporting systems?

   Response: As noted in the previous response, the FAR regulations and DOL guidance implementing the Fair Pay and Safe Workplaces EO were scheduled to take effect on October 25, 2016. However, on October 24, 2016, a federal district court judge in Texas issued a preliminary injunction to prevent certain sections, provisions, and clauses of the

rule from taking effect while the lawsuit is pending. Specifically, the Court preliminarily enjoined implementation of "any portion of the FAR Rule or DOL Guidance relating to the new reporting and disclosure requirements regarding labor law violations as described in Executive Order 13673 and implemented in the FAR Rule and DOL Guidance." The Department remains of the view that the Rule and Guidance are legally sound, and the Department of Justice is considering options for next steps.

Once the Executive Order takes effect, with the exception of occupational safety and health "State Plans" that have been formally approved by OSHA, equivalent state laws are not covered in the current guidance and rule. They will require a second notice-and-comment rulemaking to be implemented at a later date. The Administration will assess implementation and make decisions about when further regulatory action is appropriate.

Rep. Heck (NV)

1. On March 13, 2014, the President issued a memorandum instructing you to update the Department's overtime regulations under the *Fair Labor Standards Act*. The final rule issued by the Department increases the salary threshold for determining which executive, administrative, and professional employees (or "white collar" employees) are eligible for overtime compensation.

   I have heard from many of my constituents representing a cross-section of industries who are extremely concerned that this rule will seriously harm their industries; and ultimately force a reduction in hours or elimination of positions altogether.

   This issue will affect businesses of all sizes, even larger employers like the resort casino industry in my state, Nevada. Employees of these resort casinos employ nearly 28 percent of the state's workforce. Increasing the salary threshold to $47,476 will dramatically increase the labor burdens on these employers. This will likely result in workers being shifted to hourly status and facing reduced hours or even demotions. At a time when the cost of living continues to rise, how can the Department defend this rule which takes direct aim at hardworking middle-class Americans and threatens their job and financial security?

   Response: As you may know, on November 22, 2016, a federal district court judge in Texas issued a preliminary injunction that enjoins the Department from implementing and enforcing the overtime final rule. The Department remains of the view that the rule is legally sound and, with the Department of Justice, is reviewing the court's opinion and order and considering any next steps.

   One of the most basic tenets of our economy is that a hard day's work should lead to a fair day's pay. For much of the past century, a cornerstone of that promise has been the idea that you're paid more if you work more than 40 hours in a week. Too many of America's workers have been left working long hours for no additional pay, taking them away from their families and civic life without any extra compensation.

The white collar exemption from the overtime protections of the Fair Labor Standards Act was originally meant for highly-paid workers who had better benefits, job security and opportunities for advancement. Unfortunately, when left unchanged, the salary threshold is eroded by inflation every year. It has only been updated once since the 1970s—in 2004, when it was set too low. As a result, the threshold fails to help employers identify workers who are entitled to overtime pay, and it has left millions without overtime protections to which they should be entitled. This outdated salary threshold provides overtime protections to just 7 percent of full-time salaried workers today based on their pay, compared with 62 percent in 1975. In fact, the white collar exemption salary level set in 2004—$455 per week or $23,660 a year—means even workers earning less than the poverty line for a family of four may earn too much to automatically qualify for overtime.

It's important to note that these rules do not require employers to convert salaried workers to hourly workers, or from managers to line employees. Salaried workers may be paid overtime. And overtime-eligible workers may be paid a salary. Workers want to be – and should be – paid fairly for the hours they work. Workers and their representatives in their public comments said workers prefer more pay to a particular status under the FLSA.

Employers have a wide range of options for responding to the changes to the salary level, and the Department does not dictate or recommend any method. The circumstances of each affected employee will likely impact how employers respond to this Final Rule, and the Department accounted for these (and other) possible employer responses in estimating the likely costs, benefits, and transfers of the Final Rule. We encourage employers to use our guidance, such as the General Guidance for Private Employers, to understand these options further.

Rep. Stefanik (NY)

1. I wanted to discuss your agency's changes to federal overtime exemptions that will have sweeping unintended and adverse impacts on employees and employers across the country. Millennials will be particularly hard hit by the unprecedented increase in the salary threshold. Recent college graduates across the country will see career pathways and opportunities for flexible work arrangements diminish significantly. There is not a single state in which median entry level wages for full-time workers with a college degree comes even close to $47,476, and this challenge is even more difficult in places like the North Country where companies already face challenges attracting millennial talent. What this means is more college graduates will enter the workforce as hourly employees and will struggle to pay off college loans and make the important steps toward financial independence that so many young people today wrestle with. The rule's annual increase to the salary threshold will only exacerbate these negative impacts as opportunities to move into salaried, exempt positions become further and further out of reach.

What analysis did the Department conduct in the development of this rule regarding the impacts on career advancement opportunities for millennials entering the workforce with student loan debt?

Did the Department evaluate the impact that this rule will have on the ability of areas like upstate New York to continue to attract young people when those individuals will be stuck in hourly jobs with few opportunities for upward mobility in the workforce?

Response: As you may know, on November 22, 2016, a federal district court judge in Texas issued a preliminary injunction that enjoins the Department from implementing and enforcing the overtime final rule. The Department remains of the view that the rule is legally sound and, with the Department of Justice, is reviewing the court's opinion and order and considering any next steps.

As part of the rulemaking process, the Department conducted an extensive, thorough study of the overtime rule's economic impact, which can be found in the Federal Register pages 32448-32459 (a summary of the economic impact analysis can be found here). Based on comments received, DOL considered low-wage regions and made a significant change from the proposed rule: We proposed a level based on nationwide salaries, but our final rule is based on salaries in the lowest-wage Census region (currently the South). The new salary level is appropriate for employers across a broad range of regions, industries, and business sizes. In addition, the Department has traditionally considered recent college graduates to be overtime eligible, as they have typically not achieved bona fide administrative or professional status, nor are their salaries commensurate with those of fully trained and experienced professional or administrative employees. See footnote 35 on page 32410 of the rule.

It is important to clarify that the Department is establishing automatic updates to the standard salary level every *three years*, rather than annually as in the proposed rule and as indicated in your question. The Department has also committed to giving employers 150-day notice of what the new threshold will be so that employers can plan accordingly. These changes to the updating mechanism were directly responsive to employer comments about the administrative burden of annual updating.

The white collar exemption was originally meant for highly-paid workers who had better benefits, job security and opportunities for advancement. Unfortunately, when left unchanged, the salary threshold is eroded by inflation every year. It has only been updated once since the 1970s—in 2004, when it was set too low. As a result, it has left millions without overtime protections to which they should be entitled. This outdated salary threshold provides overtime protections to just 7 percent of full-time salaried workers today based on their pay, compared with 62 percent in 1975. In fact, the white collar exemption salary level set in 2004, $455 per week or $23,660 a year—means even workers earning less than the poverty line for a family of four may earn too much to automatically qualify for overtime.

It's important to remember that these rules do not require employers to convert salaried workers to hourly workers, or from managers to line employees. Salaried workers may

be paid overtime. And overtime-eligible workers may be paid a salary. The Department heard repeatedly in its outreach to employees and worker advocates and in comments on the NPRM that workers derive status from how much they make and how much responsibility they have, not whether they are paid on a salary or hourly basis.

In addition, the Department estimates that of the 4.2 million workers who will either gain new overtime protections or get a raise to the new salary threshold, more than half (53%) have at least a four-year college degree, and an additional 29% have some college education or an associates/occupational degree. Roughly two in five (39%) of affected workers are under the age of 35. This long-awaited update will provide a meaningful boost to young and college-educated workers, and it will go a long way toward ensuring that every worker is compensated fairly for their hard work.

Ranking Member Scott (VA)

1. In 2007 the Office of Legal Counsel (OLC) issued a memorandum in response to a request from a Department of Justice grantee, World Vision, to be exempted from a statutory employment nondiscrimination provision.[2] World Vision argued that complying with this nondiscrimination provision unduly burdened their religion under the *Religious Freedom Restoration Act* (RFRA). The OLC granted this request in 2007 authorizing World Vision to continue to discriminate against prospective employees on the basis of religion in taxpayer funded programs. Over the past nine years, the Department of Justice has not only allowed this exemption to stay in place for World Vision, but this taxpayer funded discrimination has been extended to other programs in other agencies. Is this memo limited to grantees?

   Response: The *World Vision* memo you identify is a controlling opinion of the U.S. Department of Justice concerning how RFRA applies to laws restricting recipients of federal financial assistance from making employment decisions based on religion. DOL guidance effectuating that opinion and establishing procedures for implementing the requirements of RFRA within DOL is available online at https://www.dol.gov/oasam/grants/RFRA-Guidance.htm.

   a. Does the Department allow faith-based organizations receiving DOL grants to discriminate against Muslims, Jews, and Catholics?

      Response: Under certain circumstances, described in detail below, a faith-based organization receiving a DOL grant could employ only individuals of a particular religious belief. For example, if it met all the requirements described below, a Catholic faith-based organization could hire only Catholics.

      Where a law enforced by DOL (such as the Workforce Innovation and Opportunity Act) prohibits religious discrimination in employment by recipients of DOL financial assistance, such prohibition will be displaced by RFRA and thus

[2] https://www.justice.gov/sites/default/files/olc/opinions/2007/06/31/worldvision.pdf

will not apply to a recipient with respect to the employment of individuals of a particular religious belief to perform work connected with the carrying on by such recipient of its activities, provided that (i) such recipient can demonstrate that its religious exercise would be substantially burdened by application of the religious non-discrimination requirement to its employment practices in the program or activity at issue, and (ii) DOL is unable to demonstrate that applying the non-discrimination provision to this recipient both would further a compelling government interest and would be the least restrictive means of furthering that interest. A determination whether a recipient of DOL financial assistance qualifies under RFRA for an exemption from a religious non-discrimination requirement in an authorizing statute or regulation will be made on a case-by-case basis upon request of the recipient.

Once selected as a grantee, a recipient that wishes to request an exemption from the application of a religious non-discrimination provision must submit a request for exemption to the Assistant Secretary charged with issuing or administering the grant or his/her designee certifying that: (1) providing the services to be funded by the grant is an exercise of the recipient's religious beliefs; (2) receiving the grant is important to the recipient, in the sense that providing the services is demonstrably tied to the recipient's religious beliefs, and without the grant the recipient's ability to provide the services in question would be substantially diminished; (3) employing individuals of a particular religious belief is important to the religious identity, autonomy, or communal religious exercise of the recipient; and (4) conditioning receipt of the grant on compliance with the non-discrimination provision creates substantial pressure for the recipient, in providing the services in question, to abandon its belief that hiring based on religion is important to its religious exercise. The recipient must further certify that it will comply with the requirements of 29 CFR part 2, subpart D, Equal Treatment in Department of Labor Programs for Religious Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries.

The Assistant Secretary or his/her designee, in consultation with DOL's Office of the Solicitor, determines whether the recipient is entitled to an exemption from the religious non-discrimination provision at issue.

b. As a hypothetical, can a faith-based service provider receiving DOL funds to facilitate training and employment services to formerly incarcerated juveniles discriminate against LGBTQ social workers, counselors, and other staff because of their sexual orientation or gender identity?

Response: The World Vision opinion applies only to exemption from a requirement not to discriminate on the basis of religion. It does not address exemption from any requirement not to discriminate on the basis of sex, sexual orientation, or gender identity. Recipients exempted from the religious non-discrimination requirements at issue will not be exempted or excused, by virtue of

the exemption, from complying with other requirements contained in the law or regulation at issue.

c. What recourse does the Department provide to individuals whose civil rights are statutorily protected but experience discrimination in taxpayer-funded programs as a result of the OLC memo?

Response: A recipient of DOL financial assistance that qualifies under RFRA for an exemption from a religious non-discrimination requirement in an authorizing statute or regulation may lawfully employ only individuals of a particular religious belief. Under those circumstances, DOL would not be able to pursue any complaint of religious discrimination against a faith-based organization filed by an applicant for employment that alleged solely that he or she was not hired because he or she did not share the religious belief of the faith-based organization. As noted above, however, recipients exempted from the religious non-discrimination requirements at issue will not be exempted or excused, by virtue of the exemption, from complying with other requirements contained in the law or regulation at issue.

d. What steps are you taking to end this federally-sanctioned discrimination and to ensure that organizations operating programs on behalf of the federal government are aware of their civil rights obligations?

Response: As noted above, the *World Vision* memo is a controlling opinion of the Department of Justice. The Department of Justice, DOL, and the entire administration are committed to ensuring that we partner with faith-based organizations in a way that is consistent with our laws and our values, and we continue to evaluate legal questions that arise with respect to these programs to ensure that they fully comply with all applicable laws. As noted above, a recipient of DOL financial assistance that qualifies under RFRA for an exemption from a religious non-discrimination requirement must certify that it will comply with the requirements of 29 CFR part 2, subpart D, Equal Treatment in Department of Labor Programs for Religious Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries.

2. The President has issued the Executive Order on Fair Pay and Safe Workplaces, which requires bidders and contractors to provide information on labor law violations over the previous three years. This will help ensure that contracting officers have full information when determining whether a prospective contractor is "responsible." Opponents label this policy of screening contractors for their labor compliance record as "blacklisting."

   a. What is your response to this blacklisting argument? Is that a fair characterization of this Executive Order, and if not, please explain why.

Response: The Department disagrees with the characterization that the EO "blacklists" potential federal contractors, rather the intent of the EO is to ensure contractors comply with federal labor laws. The federal government should not be doing business with companies that break the laws that protect workers' safety, wages, and civil rights. While the vast majority of federal contractors play by the rules, every year tens of thousands of American workers are denied overtime wages, not hired or paid fairly because of their gender, race, disability or veteran's status, or face unnecessary health and safety risks in the workplace by corporations contracting with the federal government.

Suspension and debarment procedures play an important role in the procurement process. They serve to exclude from the federal contracting process those contractors whose record is so poor that it serves the public interest to preclude them completely from receiving additional contracts.

The purpose of the EO is to encourage compliance – not to deny contracts. The processes and tools DOL and the FAR Council are establishing are designed to help in identifying and addressing labor violations *before* they require consideration of suspension and debarment. Contracting officers will not be compelled to deny any prospective contractor the award of a contract because of a labor law violation. Instead, the contracting officers will make responsibility determinations based on a contractor's violation history and mitigating factors, including the extent to which a contractor has taken steps to negotiate compliance agreements with enforcement agencies to correct past problems and avoid future ones.

In some cases, contractors may need to be considered for suspension and debarment because of the seriousness of their violations and the failure to take remedial actions. The EO does not, in any way, alter the suspension or debarment process, or long-standing principles of fairness and due process built into those procedures. However, the expectation is that the processes and tools envisioned by the EO will reduce the need for an agency to consider suspension and debarment and help contractors avoid the consequences of those remedies.

b. The Executive Order requires that the Federal Acquisition Regulatory Council issue implementing regulations and requires the DOL to issue guidance. What is the status of the rules and guidance?

Response: The DOL guidance and FAR regulations implementing the EO were published in the Federal Register on August 25, 2016, and were scheduled to take effect on October 25, 2016. However, on October 24, 2016, a federal district court judge in Texas issued a preliminary injunction to prevent certain sections, provisions, and clauses of the rule from taking effect while the lawsuit is pending. Specifically, the Court preliminarily enjoined implementation of "any portion of the FAR Rule or DOL Guidance relating to the new reporting and disclosure requirements regarding labor law violations as described in Executive Order

13673 and implemented in the FAR Rule and DOL Guidance." The Department remains of the view that the Rule and Guidance are legally sound, and the Department of Justice is considering options for next steps.

The Court Order does not enjoin implementation of those sections of, or the clause in, the FAR rule addressing the paycheck transparency requirements in the EO (i.e., section 5 of the EO 13673). This coverage will take effect for new solicitations issued on or after January 1, 2017, as stated in the final rule.

3. The Department proposed regulations related to the Black Lung Benefits Program which requires parties – including employers, claimants, attorneys and other authorized representatives – to disclose all medical information developed in connection with a claim for benefits, even when the party does not intend to submit the information into evidence. That rule was proposed on April 28, 2015, and the comment period closed June 29, 2015. Twenty comments were received.

   What is the status of this rule and when will a final rule be issued?

   Response: The final rule was published on April 26, 2016. The regulations became effective on May 26, 2016.

4. Patriot Coal has recently liquidated after filing for bankruptcy, and the Black Lung Disability Trust Fund became liable for approximately $65 million in uninsured claims costs because Patriot Coal did not have adequate surety to back up its self-insured black lung claims liability.

   a. What is the Department doing to ensure that there is adequate surety posted for the rest of the self-insured operators?

      Response: Recently, the Division of Coal Mine Workers' Compensation (DCMWC) conducted a thorough review of the self-insured compliance process and determined that its past practices for evaluating self-insurance applicants were outdated. In collaboration with the OWCP Comptroller, DCMWC determined that a systematic review of our processes was needed, which required specialized skill sets in financial, economic, and risk analysis. A third-party contractor with the requisite expertise was hired to analyze the current self-insured responsible operator (RO) inventory and to assist DCMWC in devising a new evaluation system that is comprehensive, transparent, and can be applied consistently to new applicants as well as current operators undergoing reevaluation. This new formula will adequately safeguard the Black Lung Disability Trust Fund (BLDTF) by employing the services of a second third-party contractor to review, implement, and test the new system. Once the new financial health assessment tool is complete (estimated to be in FY 2017), DCMWC will conduct reevaluations of all active operators that are approved for self-insurance authority to determine if their current level of security is sufficient. This assessment tool will also be used for new applicants. If it is determined that an operator's security

falls short of the calculated potential liability, then that operator will be required to increase its security to the acceptable amount or risk having their self-insurance authorization revoked, or in the case of a new applicant, their application for self-insurance will be denied.

b. Has the Department estimated the maximum potential financial exposure to the Black Lung Disability Trust Fund from self-insured operators where there is insufficient surety and responsible mine operator has filed for bankruptcy or is anticipated to do so in the foreseeable future?

Response: DCMWC does not have liability projections for every self-insured operator and therefore cannot provide a total liability figure. However, we anticipate being able to make such projections in the future. As mentioned above, once the new financial health assessment tool is complete, DCMWC will be better positioned to project the future liability of all operators who wish to enroll in the self-insurance program along with all operators currently approved to participate in the self-insurance program.

c. What is the range of that potential liability to the Trust Fund?

Response: As explained in the previous response, DCMWC does not have liability projections for every self-insured operator and therefore cannot provide a total liability figure. We have, however, estimated the Trust Fund's likely exposure in several recent and ongoing bankruptcies. Our best estimate for those matters is: Alpha Natural Resources ($182M to $192M); Arch Coal ($0); James River Coal ($49M to $90M); Patriot Coal ($65M); Peabody Coal ($0 to $63.4M); and Walter Energy ($0), for a total estimated exposure of $296M to $410M. Please note that these estimates depend on actuarial projections and may change as the bankruptcy cases proceed.

d. Does the Department have adequate tools to adequately defend the financial interests of the Trust Fund when self-insured operators do not have sufficient surety at the time they file for bankruptcy?

Response: When a self-insured operator files for bankruptcy, DCMWC works closely with legal counsel in DOL's Office of the Solicitor and the Department of Justice to prepare and file proofs of claim and other necessary documents. At that point, however, the Department has little in the way of effective tools to protect the Trust Fund's financial interests. Once an operator defaults on its federal black lung obligations by failing to pay benefits, 30 U.S.C. § 934(b) grants the United States a lien on a defaulting operator's assets that is entitled to the same priority as a federal tax lien. This lien, however, does not effectively protect the Trust Fund when self-insured operators file for bankruptcy. Bankrupt operators do not typically default on their federal black lung obligations until after the bankruptcy court approves a reorganization plan. Once the plan is approved (and assuming that the reorganized entity or asset purchaser does not assume the operator's

federal black lung liabilities), the operator's federal black lung liabilities are generally discharged, which renders our lien unenforceable. As a result, the Trust Fund is typically treated as a general unsecured creditor by the bankruptcy courts, which usually translates into a limited recovery.

5. Charges for compound drugs provided to injured workers under the Federal Employees' Compensation Act have escalated at a steep rate since 2013. The costs to the U.S. Postal Service for compound drugs from FECA claims are expected to exceed $150 million in FY 2016 – up from only $4.9 million in FY 2012. The USPS IG recently issued a report (HR-MA-16-003) quantifying this dramatic increase in the compound drug costs and has recommended that DOL adopt a fee schedule and reimbursement caps.

   a. What has DOL done to address the concerns of the U.S. Postal Service since this matter was brought to the attention of the Office of Workers' Compensation Programs?

      Response: OWCP has developed an aggressive plan to implement enhanced controls and process changes to the authorization of prescription compound drug claims. OWCP has changed the FECA fee schedule for prescription drugs to reduce the amount paid for compounded drugs, including: a tier pricing scheme that is based on the number of ingredients in the compounded drug is requiring the use of a universal claim form for all compounded drug prescriptions. OWCP has also developed a policy to exclude the reimbursement of certain ingredients that are not deemed medically necessary. Additionally, OWCP is implementing a pre-authorization process for all compounded drug prescriptions in the FECA program. Effective October 17, 2016, a CA-26 Letter of Medical Necessity (LMN) is now required for the FECA program, which must be completed by the claimant's treating physician before FECA will authorize or pay for a prescription. Since a great deal of compounded drug fraud/abuse occurs at the hands of compounding pharmacies, ensuring that the treating physician certifies that each ingredient of the compounded drug is medically necessary should greatly reduce the usage of compounded dugs. OWCP consulted heavily with TRICARE and others to benefit from their experience with compounded drugs. OWCP expects that these measures will increase safety and greatly reduce costs, as it continues to evaluate additional measures. During the first two months that the CA-26 was in use, 591 non-opioid compounded drug LMNs were submitted and 19 were approved. Additionally, 3,753 requests for non-opioid compounded drug prescriptions were denied at point of sale.

   b. Will the DOL adopt a fee schedule and reimbursement caps for compound drugs? If so, on what date will these kick in?

      Response: The Division of Federal Employees' Compensation (DFEC) has had a fee schedule for all prescription drugs, including those used to make up compounded drugs, since 1999. The fee schedule is reviewed and adjusted regularly in order to keep current with costs. DFEC has also employed other cost-

reduction strategies over the years, such as mandating the use of generic drugs unless otherwise prescribed by the physician.

In order to combat the rising costs of compounded drugs, DFEC has employed some short-term strategies to reduce costs while longer-term strategies are being developed. All compounded drug ingredients are being paid as generic drugs, not brand name, in order to price them at a lower rate. Effective July 1, 2016, DFEC reduced the reimbursable rate for generic drugs an additional 10%, which will further reduce costs. In addition, a "two-tiered" fee schedule has been put into place for compounded drugs, based on the number of ingredients used. For any compounded drug prescription with up to three ingredients, DFEC will reimburse at 50% of the Average Wholesale Price (AWP) of each ingredient. For those containing four or more ingredients, the reimbursement rate will be 30% of AWP.

There are no plans to institute hard dollar reimbursement caps for compounded drugs at this time but we expect that the CA-26 Letter of Medical Necessity required effective October 17, 2016 will reduce costs significantly. During the first two months that the CA-26 was in use, 591 non-opioid compounded drug LMNs were submitted and 19 were approved. Additionally, 3,753 requests for non-opioid compounded drug prescriptions were denied at point of sale.

c. Is DOL tracking whether other federal agencies are experiencing similar percentage increases in compound drug costs for injured workers receiving benefits under FECA?

Response: Yes. OWCP is treating the compounded drug issue as one concerning all federal agencies, and our action plan should benefit all federal agencies.

d. Please provide data on the total amount paid out by OWCP for compounded drugs under the FECA program between FY 2011 and FY 2016 year to date.

Response:

FY2011	$2.4 million
FY2012	$10.5 million
FY2013	$33 million
FY2014	$79 million
FY2015	$214 million
FY2016	$239 million

Rep. Davis (CA)

1. Earlier this year, the Department, delayed the release of WIOA regulations mandating competitive bid process for One-Stop Career Centers from January 2016 until June 2016. Local workforce boards have communicated that shifting to a procurement process is a complex and time consuming process. Considering the reduced time in which to complete the proposed shift by the July 2017 deadline, what steps is the Department of

Labor taking in providing flexibility or an extended deadline to states to meet the new standards?

Response: The WIOA Final Rule was published on August 19, 2016, and it ultimately took effect on October 18, 2016. In the meantime, the Department has provided flexibility to states and local WDBs by extending the time in which they are required to follow the competitive procurement provision from the July 1, 2015, statutory effective date to July 1, 2017, using the Department's transition authority provided in Section 503 of WIOA. The local boards will have had nearly three years from the date WIOA was authorized to prepare to meet this requirement. The Department has issued several FAQs on this topic and is preparing additional guidance and technical assistance to support the selection of one-stop operators by July 1, 2017.

Rep. Fudge (OH)

1. Apprenticeship programs are a proven on-the-job training strategy that put workers on a pathway to the solid middle class jobs. Research suggests that not only do apprentices earn an average of $50,000 after completing training but for every dollar taxpayers invest on apprenticeships we see $27 in benefits. The Department has made great strides in lifting up this successful on-the-job training model. Our country is currently facing a skills gap, which will only increase with time. Over 70 percent of organizations cite "capability gaps" as their biggest challenge. What steps is the Department taking to provide our current workforce with more dynamic skills that will allow them to continue to advance alongside our evolving economy?

   We talk a lot about moving young people from high school and community colleges to skilled jobs. How is the Department strengthening pipelines between various sectors in order to repurpose our workforce and support our middle-aged workers in career transitions?

   Response: The 21st century American worker faces an increasingly complex and dynamic job market and the Department is focused on taking action to ensure that education and training systems in states and communities are able to keep pace to meet employers' evolving skills needs. Partnering with our sister agencies, state and local workforce boards, chief elected officials, employers, unions, schools, community organizations and others is essential to build education and training pipelines along career paths in in-demand industries that face critical skill shortages now and in the foreseeable future. The Department continues to take action through the implementation of the Workforce Innovation and Opportunity Act, Registered Apprenticeship expansion, Trade Adjustment Assistance, as well as a number of strategic investments such as the Trade Adjustment Assistance Community College Career Training (TACCCT).

   Common across those efforts is the importance of supporting state and regional economies to identify high-demand or fast growing industry sectors, and build employer-driven talent pipelines that lead to good paying careers in those industries for all job-seekers from youth to middle-age workers seeking opportunity. That common focus is

supported by growing evidence that firms engaged in regional industry sector partnerships with education and training institutions experience higher rates of job and wage growth than comparable firms.

The Department provides critical support to those industry partnerships to build talent pipelines that emphasize a number of strategies to meet employer needs. That includes supporting training that leads to a credential of value as identified by employers from Associate's degrees to other industry certifications or licenses. The Department also emphasizes in its investments the value of work-based learning such as apprenticeship, on-the-job training, internships and work experience, which can help overcome employer-specific skill and capability gaps. The Department also supports partnerships that help employers to upskill existing employees to move up the company ladder to or transition to new opportunities.

All those strategies are featured within the Department's guidance to workforce system partners at the state and local level as well as supported by discretionary investments. For example, the TAACCCT grant program invested $1.9 billion in building the capacity of community colleges to better train Trade Adjustment Assistance eligible and other adults, which frequently benefits students of all ages. In addition, TAACCCT grantees have uploaded more than 6,000 resources to the Open Education Resources repository at SkillsCommons.org, which have been downloaded more than 135,000 times by community colleges and others for potential re-use, significantly leveraging this federal investment.

2. I am concerned that key populations are facing significant barriers to participating in registered apprenticeships. Can you tell me more about what the Department is planning to do to expand apprenticeship programs to ensure that more women and people of color are recruited for and retained in registered apprenticeship programs?

Response: The Department is committed to working with businesses, community colleges, and other stakeholders to equip America's job seekers and workers with the tools and skills they need to succeed in the 21st century labor market. For example, the Administration set a bold goal in 2014 to double and diversify Registered Apprenticeship by 2019. To accomplish this, the Department, as part of its initiative to expand Registered Apprenticeship, is promoting the inclusion of populations that have historically been underrepresented in apprenticeship programs – including women, people of color, individuals with disabilities, and others.

The Department appreciates the Congress' bipartisan support for ApprenticeshipUSA, and we used a significant amount of the $90 million we received in the FY 2016 spending bill to expand and diversify Registered Apprenticeship. For example, we recently awarded $50.5 million in grant funds through the ApprenticeshipUSA State Expansion Initiative to support State efforts to strengthen the foundation for the expansion of quality Registered Apprenticeship programs. One of the three goals of this grant initiative is to significantly increase apprenticeship opportunities for all workers in America, particularly low-income individuals and underrepresented populations. The Department

also designated a portion of the ApprenticeshipUSA State Expansion grant funds to be used specifically for pilot projects to expand access to underrepresented populations.

The Department also awarded four contracts for $5.8 million (total) to national intermediaries to work with DOL and State Apprenticeship Agencies to develop national or regional "opportunity partnerships." These opportunity partnerships will consist of Registered Apprenticeship sponsors committed to increasing gender, racial, ethnic and other demographic diversity and inclusion in apprenticeships.

Additionally, the Department continues to learn lessons from our experience with Women in Apprenticeship and Non-traditional Occupations (WANTO) grants to community-based organizations to assist employers and labor unions in promoting the recruitment, training, employment and retention of women in apprenticeship and non-traditional occupations, and will incorporate these lessons in the administration of new Apprenticeship grant competitions. The Department made its latest WANTO grant awards in June 2016, which will run over two years to support technical assistance efforts and outreach to Registered Apprenticeship programs.

3. We all know how difficult it is for formerly incarcerated individuals to get back into the workforce. Everyone deserves a second chance in life, including those who have served their time and repaid their debt to society. The vast majority of individuals released from prison are trying their best to get back on their feet, become productive members of their communities and get back into the workforce. One significant barrier to finding meaningful employment is the "box" on employment applications asking applicants to disclose upfront whether they have ever committed an offense. Can you tell us where the Department is on implementation of "ban-the-box" at both the federal and local level? Can you speak about the work you and the Department are doing to help these folks get back on their feet and into good jobs?

   Response: This Administration is committed to pursuing public policies that promote fairness and equality. On April 29, 2016, the Office of Personnel Management issued a proposed rule effectively "banning the box" for a significant number of position in the Federal Government by delaying the point in the hiring process when agencies can inquire about an applicant's criminal records. Currently 24 states, including Ohio, and over 150 cities, including Cleveland, have enacted some form of "ban the box" law. Additionally there are several other ways the Administration and the Department are providing supportive tools and resources to help formerly incarcerated individuals get jobs so that their criminal record is not a barrier.

   The Department has funded three rounds of Linking Employment Activities Pre-Release (LEAP) grants. These grant funds support the development and implementation of specialized American Job Centers (AJCs) inside the correctional facility that directly link and bridge local inmates to the full service AJC within their community. Further, providing a direct "hand-off" for transitioning offenders to their community-based AJCs upon release, they will receive crucial follow-up and supportive services that will support their transition back into the workforce as well as their progress along their chosen career

pathways. By placing specialized AJCs inside of county, municipal, or regional jails and correctional facilities, soon to be released local inmates will receive services to prepare for employment and increase their opportunities for successful reentry into their home communities. This program will build partnerships between local correctional systems and the local workforce systems and link transitioning offenders to a range of community-based workforce services that lead to successful employment.

In 2012, the Equal Employment Opportunity Commission issued guidance on the appropriate use of arrest and conviction records in employment decisions under Title VII of the Civil Rights Act of 1964. Subsequently, DOL issued a Training and Employment Guidance Letter (TEGL 31-11) to state and local public workforce administrators. This guidance provides explicit steps that the public workforce system – including One Stop Career Centers – should take to ensure compliance with federal EEO law and other nondiscrimination laws, to educate their employer customers, and to promote employment opportunities for people with criminal records. DOL also issued guidance to provide federal contractors under OFCCP's jurisdiction with information on circumstances in which exclusions of applicants or employees based on their criminal records may violate existing nondiscrimination obligations, referencing both the EEOC guidance and TEGL 31-11.

In addition, DOL and the Department of Justice have begun development of a National Clean Slate Clearinghouse in the near future to provide technical assistance to help with record-cleaning, expungement, and other means of mitigating the effects of criminal records. The Clearinghouse will: (1) host and update a national website that provides, among other things, state-by-state information on sealing, expungement, and other related legal services that lessen the negative impact of having juvenile and criminal records; and (2) develop tools and provide technical assistance to reentry service providers and legal aid organizations on how to use and expand access to sealing, expungement, and other legal services.

The Department also recognizes that occupational licensing can limit opportunities for those with criminal records to get work. In half of the states[3], applicants can be denied a license due to any kind of criminal conviction, regardless of whether it is relevant to the license sought or how long ago it occurred. To address this challenge, the Department is making $7.5 million in grant funding available for intermediaries leading state consortia to review and analyze occupational licensing requirements and develop recommendations to make progress toward identifying licensing criteria to ensure that existing and new licensing requirements are not overly broad or create unnecessary barriers to labor market entry.

We continue to look for ways to better connect reintegrating individuals with job opportunities and the support to succeed in the workforce.

[3] Occupational Licensing Framework for Policy Makers Report of 2015, Department of the Treasury, Office of Economic Policy, the Council of Economic Advisers, and the Department of Labor. https://www.whitehouse.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf

Rep. Bonamici (OR)

1. Mr. Secretary, a business owner in my district has brought to my attention that a particular OSHA regulation on flammable and combustible liquids in container and portable tank storage is egregiously outdated. The section is based on a version of the National Fire Protection Association fire code published in 1969 that has since separately been updated numerous times with the most recent edition in 2015. Several major fires have resulted in improper storage of ignitable liquids. In June of 2015, a letter was sent to Dr. Michaels from a group of interested parties named PackSafe regarding the serious safety issue concerning this regulation, OSHA 29 C.F.R. 1910.106 based on the 1969 version. In response, although the Department acknowledged the outdated regulation, they did not provide a plan to update it. OSHA's mission is to ensure workers are safe. To meet this mission, it is important that businesses that use containers to store their products are following the best available science to ensure the safety of life and property. How does OSHA plan to update the references in the regulations to ensure a safe and healthy workplace for workers? What do you need from Congress to make sure this regulation can be updated?

   Response: OSHA has considered updating §1910.106 on several occasions. A proposed revision to the rule was included in the Unified Regulatory Agenda from 1996 to 2001, when it was removed due to resource constraints. To revise the standard, OSHA must consider not only the specific provisions relating to container and portable tank storage, but also other related requirements in §1910.106. By statute, OSHA must demonstrate that any revisions are necessary to address a significant risk of harm and that they are technologically and economically feasible to implement. Meeting these and other legal requirements in a rulemaking involves a significant expenditure of agency resources and time. OSHA must balance its regulatory priorities to make the most effective use of limited resources while maximizing worker protection. Given these constraints, the agency has no current plan to update §1910.106.

   OSHA recognizes that §1910.106 may not address some hazards addressed in the updated versions of the NFPA 30 standards (such as hazards of uncontrollable fires from breached containers storing combustible and flammable liquids). However, in some situations where hazards are not covered by the current standard, OSHA may enforce Section 5(a)(1) of the OSH Act, the "General Duty Clause." The General Duty Clause requires an employer to furnish to its employees a place of employment which is "free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees...."

   Finally, regarding your question about how Congress can help to ensure update of this regulation, OSHA cannot, on its own, shortcut or bypass the procedural and substantive requirements applicable to agency rulemaking. Congress, however, may direct the agency to take regulatory action without regard to these constraints. OSHA staff are available for further discussions if appropriate.

2. Unemployment benefits serve a critical role in helping people while they are seeking work. I am concerned about the unemployment benefit gap facing many school employees across the country. In my home state of Oregon, our legislature recently passed a bipartisan, narrowly-tailored solution to this challenge with support from both the school employee union and the school boards association (SB 1534, 2016 Oregon Session). The bill aims to fix the benefit gap facing approximately 45 "non-professional" school employees in Oregon each year who leave their job for unavoidable reasons and whose unemployment benefits are lost when schools are on break. Custodians should not lose their unemployment benefits simply because they work in a school rather than an office building.

   There is agreement in Oregon at the state and local level to keep this narrow group of former school employees from losing their benefits. Unfortunately, despite the Oregon legislation, the agreement among stakeholders and the Department's flexibility for "non-professional" employees, the Department has stated that this solution is unacceptable.

   The Department is provided with flexibility over this class of workers; please explain why a narrowly-drafted law, like Oregon's, is problematic. Are there alternative ways to address this group of employees so their benefits do not expire? The unemployment insurance program is premised on a partnership between the state and federal governments, so please explain specifically what steps the Department is taking to assist states in their efforts to design and implement programs that best fit their needs and comply with federal law.

   Response: The Department supports Oregon's efforts to ensure that unemployment benefits are available to workers who lose their job through no fault of their own. Access to benefits is a high priority for the Administration. The Department routinely works collaboratively with states as they are shaping their Unemployment Insurance (UI) laws and works to provide alternative solutions when possible. Our previous discussions with state agency staff about SB 1534 reflect longstanding interpretations of specific and complex provisions in federal law that apply to individuals who work for educational institutions. We appreciate you raising this issue and will keep in mind your policy concerns as we move forward.

[Whereupon, at 11:59 a.m., the Committee was adjourned.]

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